

**RECIPIENT FUNDING AGREEMENT FOR TFCA FUNDS
BETWEEN THE
NAPA VALLEY TRANSPORTATION AUTHORITY
AND
CITY OF CALISTOGA
(Project #18NAP02)**

This Recipient Funding Agreement (hereinafter "Sub-Agreement") is made by and between the Napa Valley Transportation Authority, a joint powers authority consisting of the cities of American Canyon, Calistoga, Napa, and St. Helena, Town of Yountville, and the County of Napa, (hereinafter "NVTa"), and the City of Calistoga, (hereinafter "Recipient").

RECITALS

WHEREAS, NVTa and the Bay Area Air Quality Management District (hereinafter "Air District") entered into a Funding Agreement dated September 9, 2017 hereinafter "Master Agreement") providing for NVTa's receipt, allocation and expenditure of certain Transportation for Clean Air funds (hereinafter "TFCA funds") from the Air District; and

WHEREAS, NVTa is obligated, pursuant to the Master Agreement, to require various commitments from any recipients of the TFCA funds allocated by NVTa pursuant to the Master Agreement; and

WHEREAS, Recipient is the project sponsor for 18NAP02 – Riverside Class I Path ("Project") which is a qualifying project under the terms of Master Agreement; and

WHEREAS, Recipient is installing a Class I Path along the Napa River adjacent to the AT&T building; and

WHEREAS, Recipient is entitled to an allocation of TFCA funds upon completion of the Project or various phases thereof.

AGREEMENT

**NOW THEREFORE, NVTa AND RECIPIENT HEREBY
ENTER INTO THIS RECIPIENT FUNDING AGREEMENT ON THE
FOLLOWING TERMS AND CONDITIONS:**

A. Project and Funding Identification:

1. The project description to which this Sub-Agreement applies is set forth in Exhibit A, entitled "Project Information," which is attached hereto and incorporated herein by this reference.

2. The maximum funding amount allocated pursuant to this Recipient Agreement is in the sum of one hundred one thousand and five hundred dollars (\$101,500) as set forth in Exhibit A. TFCA funding for the project shall be disbursed on a cost reimbursement basis and shall not exceed the amount allocated.
3. Disbursement of funding hereunder is at all times subject to receipt by NVTA of funds under the Master Agreement.

B. Recipient Agrees:

1. To be bound and abide by any and all applicable provisions of the Master Agreement between NVTA and the Air District dated September 9, 2017 which is attached hereto as Exhibit B and is incorporated herein by this reference. Where the Master Agreement requires NVTA to require a particular item or obligation of a recipient, Recipient agrees to be bound by and comply with the item or obligation being required.
2. To cooperate with NVTA and do all such things, provide all such documentation and take all such actions as shall be reasonably requested by NVTA to facilitate Recipient's and NVTA's compliance with the Master Agreement and this Agreement.
3. To submit invoices to NVTA on a quarterly basis (ending September 30, December 31, March 31, and June 30), but in no case more than ninety (90) days after Project completion.
4. To comply with all project monitoring requirements set forth in Exhibit A.
5. Recipient acknowledges and guarantees that the projects for which this TFCA funding is allocated are qualifying projects under to the Master Agreement.
6. To return to the NVTA any TFCA funds and/or associated interest which are allocated pursuant to this Sub-Agreement and which have not been expended on the Project, on or by July 1, 2020 unless a project schedule beyond this date has been approved by the NVTA.
7. That assets purchased with TFCA funds, including facilities and equipment, shall be used for the public transportation uses intended, and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for its useful life or years effectiveness, NVTA shall be entitled to a present day value refund or credit at NVTA'S option based on NVTA'S share of the Fair Market Value of the said facilities and equipment at the time the public transportation uses ceased, which shall be

paid back to NVTA in the same proportion that TFCA funds were originally used.

C. NVTA Agrees:

1. To forward the TFCA funds allocated for the Project in a reasonable and timely manner following receipt and approval of a timely invoice submitted by Recipient.

D. It Is Mutually Agreed:

1. Term: This Sub-Agreement shall remain in effect for three (3) years after the completion of all the projects listed in Exhibit A, unless it is terminated earlier as provided below.
2. Termination:
 - a. Prior to distribution of the TFCA funds to Recipient, either party may terminate this Sub-Agreement at any time by giving written notice of termination to the other party which shall specify the effective date thereof. Notice of termination under this paragraph shall be given at least sixty (60) days before the effective date of such termination.
 - b. This Sub-Agreement shall automatically terminate at the end of the fiscal year during which the Napa Valley Transportation Authority loses designation as NVTA for Napa County, unless NVTA's rights and obligations arising from this Sub-Agreement are validly assigned or transferred as set forth below. NVTA shall provide written notice of termination, pursuant to this clause, to Recipient at least sixty (60) days prior to the effective date of termination, unless the loss of designation as NVTA occurs within sixty (60) days of the end of the fiscal year, in which case notice of termination shall be provided within ten (10) days of the loss of designation.
 - c. This Sub-Agreement shall terminate in the event that the Master Agreement between NVTA and the Air District is terminated. NVTA shall provide written notice of termination, to Recipient at least sixty (60) days prior to the effective date of termination, or as soon as possible after receiving notice of termination from the Air District if such notice is received less than 60 days prior to any such termination.
3. Indemnity: Recipient shall indemnify, defend with counsel approved by NVTA, and hold harmless, NVTA and its member jurisdictions, and their respective officials, officers, directors, employees, agents, and volunteers, from and against any and all claims, allegations, suits, actions, causes of action, loss, damages, expense and costs (including, without limitation, costs and fees

obligation) of every nature arising out of or in connection with performance of work hereunder, including, but not limited to, performance of work on the Project, or Recipient's failure to comply with any of its obligations contained in this Sub-Agreement, except such losses or damages which are caused by the sole negligence or willful misconduct of NVTa.

Recipient shall also indemnify, defend and hold harmless, NVTa and Air District from and against all claims, suits or actions from and against which NVTa must indemnify and save harmless Air District, which result from the performance by Recipient of its duties under this Sub-Agreement.

4. Notice: All notices and other communications required or permitted to be given under this Sub-Agreement shall be in writing and shall be personally served or mailed, postage prepaid and addressed to the respective parties as follows:

TO NVTa:

Kate Miller, Executive Director
Napa Valley Transportation Authority
625 Burnell Street
Napa, CA 94559

TO RECIPIENT:

Dylan Feik, City Manager
City of Calistoga
414 Washington St.
Calistoga, CA 94515

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days following the date of deposit with the United States Postal Service.

5. Assignability: Neither party to this Sub-Agreement shall assign or transfer any interest in this Sub-Agreement nor the performance of any duties or obligations hereunder, without the prior written consent of the other party, and any attempt by either party to so assign or transfer this Sub-Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.
6. Governing Law: NVTa and Recipient agree that the law governing this Sub-Agreement shall be that of the State of California.
7. Venue: In the event that suit shall be brought by either party to this Sub-Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Napa, and venue for federal court shall be the Northern District of California.

8. Interpretation: Each party has reviewed this Sub-Agreement and any question of doubtful interpretation shall not be resolved by any rule or interpretation providing for interpretation against the drafting party. This Sub-Agreement shall be construed as if both parties drafted it. The captions and headings contained herein are for convenience only and shall not affect the meaning or interpretation of this Sub-Agreement.
9. Force Majeure: Neither the NVTa nor the Recipient shall be liable or deemed to be in default for any delay or failure in performance under this Sub-Agreement or for any interruption of services, directly or indirectly, from acts of god, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of the Air District, NVTa or Recipient.
10. Controlling Provisions: In the event of a conflict between the provisions of this Sub-Agreement and those of the Master Agreement set forth in Exhibit B, the terms and conditions of this Sub-Agreement shall be controlling as to the parties to this Sub-Agreement.
11. Prior Agreements and Amendments: This Sub-Agreement, including Exhibits A and B hereto represent the entire agreement of the parties with respect to the subject matter described in this Sub-Agreement, and no representation, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein. This Sub-Agreement may only be modified by a written amendment duly executed by the parties hereto.

WITNESS THE EXECUTION HEREOF on the day and year first herein below written.

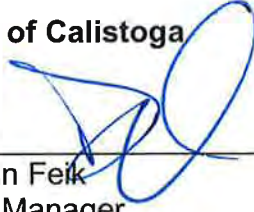
Napa Valley Transportation Authority

By: 
Kate Miller
NVTa Executive Director

Date: 11/18/18

"RECIPIENT"

City of Calistoga

By: 
Dylan Feik
City Manager

Date: 11/17/17

ATTEST:

BY Kathy Hansen

APPROVED BY

Date: 1/15/18

Processed by: Diana Mueh

Approved as to form:

Vicki A. Clayton
Vicki Clayton, NVTA Counsel

Approved as to form:

Michelle Kenyon
Michelle Kenyon, City Attorney

EXHIBIT A

- A. Project Number: 18NAP02
- B. Project Title: Riverside Class I Path
- C. TFCA Program Manager Funds Allocated: \$101,500
- D. TFCA Regional Funds Awarded (if applicable): _____
- E. Total TFCA Funds Allocated (sum of C and D): \$101,500
- F. Total Project Cost: \$800,000
- G. Project Description:
Project sponsor will use TFCA funds to construct a Class I bicycle and pedestrian path adjacent to the Napa River serving downtown Calistoga.
- H. Final Report Content: Final Report form and final Cost Effectiveness Worksheet
The Form for Bicycle and Pedestrian Projects will be completed and submitted after project completion.
- I. Attach a copy of Cost-effectiveness Worksheet and any other information used to evaluate the proposed project.
Attached to this project information sheet is the following:
 - a. Cost-effectiveness Worksheet

PROFESSIONAL SERVICES AGREEMENT

Traffic Study for the Rivers-Marie Winery

Authorizing Agreement No. 754

THIS AGREEMENT is entered into as of the 24th day of January, 2018 by and between the CITY OF CALISTOGA herein called the "City", and Whitlock & Weinberger Transportation, Inc. (W-Trans), herein called the "Consultant".

Recitals

WHEREAS, City desires to obtain traffic study services in connection with the Rivers-Marie Winery Project; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by reference.

2. Time of Performance. The services of Consultant are to commence no sooner than the date written above and, be completed not later than five weeks from the same. Any changes to these dates must be approved in writing by the Planning and Building Director or his or her designee.

3. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit "A". However, in no event shall the amount exceed Four Thousand Three Hundred Dollars and Fifty (\$4,350). Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

B. Timing of Payment. Billing for said services may be made on a monthly basis. City shall review Consultant's statement and pay Consultant for services rendered within 30 days of receipt of the Consultant's statement.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount of Four Thousand Three Hundred and Fifty Dollars (\$4,350.00).

D. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's report. Unless the action

is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates.

4. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents in the course of implementing this Agreement, except working notes and internal documents, shall become the sole property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its sole discretion without further compensation to Consultant or to any other party. Any modifications made by the City to any of the Consultant's documents or any partial use or reuse of the documents without the express written consent of the Consultant will be at the City's sole risk and without liability to the Consultant and the City shall indemnify, defend, and hold harmless from all claims, damages, losses and expenses including, but not limited to, attorney's fees resulting therefrom.

5. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists or experts for services in connection with this Agreement without the prior written approval of the City.

6. Interest of Consultant.

A. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

7. Interest of Members and Employees of City. No member of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his/her personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.

8. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

9. Indemnification of City. Consultant hereby agrees to defend, indemnify and save harmless the City, its officers, agents, employees and servants, from and against any and all claims, liability or obligations based on negligence or willful misconduct brought on account of or arising out of any acts, errors or omissions of Consultant undertaken pursuant to this Agreement. The City has no liability or responsibility for any accident, loss or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

10. Consultant Not an Agent of City. City retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

11. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

12. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City of Calistoga business license.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of this Agreement.

C. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7.

D. City Not Responsible. The City is not responsible or liable for Consultant's failure to comply with any and all of said requirements.

13. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by City, or as required by law.

14. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of the contract, a General Liability insurance policy insuring him/her and his/her firm to an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage.

(2) Consultant agrees to have and maintain for the duration of the contract an Automobile Liability insurance policy insuring him/her and his/her staff to an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than One Million Dollars (\$1,000,000.00) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide coverage for One Million Dollars (\$1,000,000.00) Employers' Liability (Coverage B).

(c) Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officials, officers, employees, volunteers, and agents.

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its employees, officers, agents and contractors are hereby added as additional insureds, but only as respects work done by, for on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any

self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to the City all certificates of insurance with original endorsements affecting coverage required by this paragraph. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

B. General Liability.

(1) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

(2) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. All Coverages. Each insurance policy required in this item shall provide that coverage shall not be canceled, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the City. Current certification of such insurance shall be kept on file with the City Secretary at all times during the term of this Agreement.

D. Acceptability of Insurers. Insurance is to be placed with insurers approved by the California Department of Insurance with a Best/Es rating of no less than A:VII.

E. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

15. Assignment Prohibited. Neither the City nor Consultant may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

16. Termination of Agreement.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon written notice to the Consultant upon 5 days' written notice. Consultant may terminate this Agreement upon 30 days' written notice.

B. If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

C. Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the City, become its sole property and shall, at Consultant's expense, be delivered to the City or to any party it may so designate.

D. In the event termination is without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that Consultant shall be entitled to compensation for work in progress at the time of termination.

17. Amendment. This Agreement constitutes the complete and exclusive statement of the Agreement to City and Consultant. It may be amended or extended from time to time by written agreement of the parties hereto.

18. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

19. Time of the Essence. Time is of the essence of this Agreement, however, the Consultant shall not be held responsible for delays caused by acts outside of Consultant's control.

20. Written Notification. Any notice, demand, request, consent, approval or communications that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth hereinbelow. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City Of Calistoga
City Manager
1232 Washington Street
Calistoga, CA 94515

If to Consultant: Whitlock & Weinberger Transportation, Inc.
490 Mendocino Ave., Suite 201
Santa Rosa, CA 95401

21. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

B. Consultant shall maintain all documents and records, which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

22. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

23. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

24. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

25. News Releases/Interviews: All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

26. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: _____


Dylan Felk, City Manager

WHITLOCK & WEINBERGER
TRANSPORTATION, INC.

By: _____


Dalene J. Whitlock, Principal

ATTEST


Kathy Flamson, City Clerk

EXHIBIT "A"



January 11, 2018

Ms. Lynn Goldberg
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

Proposal to Prepare a Traffic Study for the Rivers-Marie Winery Project

Dear Ms. Goldberg;

W-Trans is pleased to provide this proposal to evaluate potential traffic impacts associated with the Rivers-Marie Winery to be located at 900 Foothill Boulevard in the City of Calistoga. The following scope of services is suggested to identify the project's potential impacts based on our experience with numerous other traffic studies for projects in Calistoga and winery projects in Napa County.

Understanding

We understand that the project, as proposed, would include two wine production buildings and a small tasting room. The tasting room would be open from 10:00 a.m. to 5:00 p.m. year-round for use by appointment only and would accommodate one small group at a time. The proposed production and tasting room operations would require five full-time employees.

Tasks

Because we have previously prepared an operational analysis for the intersection of Foothill Boulevard/Lincoln Avenue, and the City has already established an impact fee to accumulate funding to address the existing operational deficiency at this intersection, it is suggested that we focus our efforts on developing the trip generation to be used in assessing the fee as well as site access and circulation. The following scope of services is suggested.

1. Through either telephone calls or e-mail, we will obtain a clear and complete understanding of both permitted and proposed uses for the site. Specific details regarding the proposed gallons of production and number of daily visitors will be confirmed.
2. The daily trip generation for the project will be determined using the County of Napa's Winery Traffic Information/Trip generation Sheet and the resulting number of peak hour trips as a percentage of daily trips for the weekday p.m. and weekend midday peak periods will be estimated using data collected at a tasting room in the County of Sonoma.
3. A field visit of the project site will be conducted. Specific attention will be paid to sight distance for both exiting and entering movements at the site's driveway and potential conflicts with other driveways. Appropriate field notes and photos will be taken.
4. Traffic counts for Foothill Boulevard will be requested from the City or Caltrans.
5. Existing conditions will be documented based on the counts obtained and field observations during the site visit.
6. Site access and circulation will be evaluated, including a review of the adequacy of sight distance and the potential need for improvements to the site access point to accommodate project-generated traffic. The need for turn lanes will be evaluated in terms of volume, adequacy of sight distance and safety considerations.

7. Recommendations to address any impacts identified will be provided and presented graphically, if appropriate.
8. A draft letter report that provides details of the analysis and findings, together with tables and figures, will be prepared and submitted for review.
9. Staff comments will be addressed and a revised version prepared for referral to Caltrans for review.
10. Comments from Caltrans staff will be addressed and a final letter report submitted. Comments that require analysis not included in the original scope of work will be considered beyond the scope of our contract.

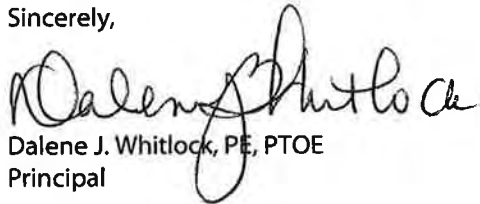
Exclusions – The scope of services includes only those items that are specifically identified above. Any additional services, such as meetings or hearings, requests for further analysis, multiple rounds of comments, or responding to peer review comments, if needed would be provided on a time and materials basis after receiving written authorization for the extra work.

Schedule and Budget

The draft letter can be submitted for your comments within approximately three to five weeks following confirmation of our scope of work by City staff. Our services will be conducted on a fixed fee basis and monthly invoices indicating the percent complete will be provided electronically unless a hard copy via mail is requested. The fee for this work is \$4,350.

Please provide your contract forms or a Purchase Order if you wish to initiate work. This proposal will remain a firm offer for 90 days from the date of this letter. Thank you for giving us the opportunity to propose on these services.

Sincerely,



Dalene J. Whitlock, PE, PTOE
Principal

CONSULTANT SERVICES AGREEMENT

Authorizing Agreement No. 758

THIS AGREEMENT is entered into as of the 21 day of February, 2018, by and between the CITY OF CALISTOGA, herein called the "City," and Koff & Associates herein called the "Consultant."

Recitals

WHEREAS, City desires to undertake a limited classification and total compensation study for all full-time city employees and desires to hire a professional consultant firm that is qualified to undertake such a study; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. City. The City Manager or his/her designee shall represent City for all purposes under this Agreement. The City Manager or designee is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant Koff & Associates is to have overall responsibility for the progress and execution of this Agreement for Consultant.

3. Scope and Performance of Services.

A. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence no sooner than February 1, 2018 and be completed no later than May 1, 2018. Consultant shall

perform its services in accordance with the schedule and incorporated herein by reference. Any changes to these dates in Section 3 must be approved in writing by the Project Manager.

C. Standard of Quality. City relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit B, and incorporated herein by reference. However, in no event shall the amount City pays Consultant exceed \$22,490 unless both parties confer and agree to additional compensation. Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

B. Timing of Payment. The City shall upon receipt of a written itemized monthly statement pay fees and applicable expenses under this Agreement within thirty (30) days of receiving such invoices from Consultant, unless contested. Payment of any fee or reimbursement shall not constitute a waiver by the City of any breach of any part of this agreement. Late charges will be assessed upon payments not received within thirty (30) days from receipt of invoice at a rate of 1.5% per month.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

D. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

E. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it is in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by City and not part of the litigation brought by City against Consultant.

5. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the City. Failure of the Consultant to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum merit, etc. for work done without the appropriate City authorization.

6. Term. This Agreement shall commence upon its execution and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish City with every reasonable opportunity for City to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to City without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement, unless required by law.

9. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists, or experts for services in connection with this Agreement without the prior written approval of the City.

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the City in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. To the fullest extent permitted by law, Consultant hereby agrees to defend (by counsel reasonably satisfactory to the City), indemnify, and hold harmless the City, its officers, agents, employees, volunteers, and servants, from and against any and all claims, demands, damages, costs, liabilities, or obligations brought on account of or arising out of any acts, errors, or omissions of Consultant, its officers, employees, agents, and subcontractors undertaken pursuant to this Agreement excepting liabilities due to the sole negligence or willful misconduct of City. The City has no liability or responsibility for any accident, loss, or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code § 2778. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Consultant under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Consultant and shall continue to bind the parties after termination/completion of this agreement.

13. Consultant Not an Agent of City. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

14. Independent Contractor. It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

15. Compliance with Laws.

A. General. Consultant shall maintain a City business license. The City is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's subconsultants (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's Public Works Department office.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. City Not Responsible. City is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against City, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under Consultant's workers' compensation insurance policies which arise from the work performed by Consultant for the City.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the City, or as required by law.

17. Assignment; Subcontractors; Employees.

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the City's prior written consent. Any assignment without such approval shall be void and, at the City's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder. No subcontractor of Consultant shall be recognized by the City as such; rather, all subcontractors are deemed to be employees of the Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

18. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of this Agreement, a General Liability insurance policy insuring it and its firm to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Consultant agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$500,000 (Five Hundred Thousand Dollars) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than \$1,000,000 (One Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide required coverage for Employers' Liability (Coverage B).

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its officials, officers, agents, employees, and volunteers are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to City all certificates of insurance with original endorsements effecting coverage required by this paragraph. Certificates of such insurance shall be filed with City on or before commencement of performance of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, officers, agents, employees, and volunteers.

(8) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30-days' prior written notice by certified mail, return receipt requested, has been given to City. Current certification of such insurance shall be kept on file with the City Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Consultant shall furnish the City with original Certificate(s) of Insurance verifying Consultant's receipt of the insurance coverage required herein.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon 15-days' written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee; provided, however, that the City shall deduct from such amount the amount of damages, if any, sustained by City by virtue of the breach of the Agreement by consultant.

C. In the event this Agreement is terminated by City without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the City. Consultant, however, shall not be liable for the City's use of incomplete materials nor for the City's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.

21. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the City and Consultant and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the City and Consultant. All provisions of this Agreement are expressly made conditions.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Arbitration of Professional Liability or Other Claim. If a dispute between the City and Consultant arises over the fees charged for the services, the controversy will be first submitted to mediation. If the parties cannot agree on a mutually acceptable mediator, then each party will choose one mediator, and those two mediators will choose a third for a total of three mediators. If mediation is unsuccessful, the parties agree to submit the dispute to binding arbitration in accordance with the rules of the State Mediation and Conciliation Service (SMCS), as set forth in California Business and Professions Code, Sections 6200 through 6202. The Arbitrator or arbitration panel shall have the authority to award the prevailing party attorney's fees, costs, and interest incurred. Any arbitration hearing notice may be served by mail upon either side and personal service shall not be required.

If a dispute arises between the City and Consultant over any other aspect of the labor relations-client relationship, including, without limitation, a claim for breach of professional duty, that dispute will also be resolved pursuant to the dispute resolution process outlined above.

Both parties to this agreement are giving up their constitutional right to have any such dispute decided in a court of law before a jury, and instead are accepting the use of mediation or arbitration. Each party is to bear its own attorneys' fees and costs in any dispute resolution process; provided, however that the prevailing party may be entitled to such fees and costs (including interest) as described above.

25. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 72 hours from the time of mailing if mailed as provided in this section.

If to Consultant: Koff & Associates
Ms. Katie Kaneko
2835 Seventh Street
Berkeley, CA 94710

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated

representative of any of these officers. Copies of such documents shall be provided to the City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

C. The City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in the City Manager's office.

27. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

28. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29. City Not Obligated to Third Parties. The City shall not be obligated or liable for payment hereunder to any party other than the Consultant.

30. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

31. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

32. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

- A. Exhibit A: Scope of Work
- B. Exhibit B: Compensation

A. Exhibit A: Scope of Work

B. Exhibit B: Compensation

33. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

34. News Releases/Interviews. All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

35. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

36. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: _____

City Manager

Date: _____

2/21/18

APPROVED AS TO FORM:

By: _____

City Attorney

ATTEST:

By: _____

City Clerk

Kathy Hamner

CONSULTANT

By: _____

Title: _____

PRESIDENT

Date: _____

FEBRUARY 1, 2018

EXHIBIT A

Scope of Work

As presented in the attached "Classification and Compensation Study Proposal Dated January 30, 2018" prepared by Koff & Associates.

SETTLEMENT AGREEMENT AND RELEASES

The parties to this Settlement Agreement and Releases ("Agreement") are the **City of Calistoga ("City")** and **WMB General Contractors ("WMB")**. City and WMB are referred to collectively as the "Parties."

1. **OVERVIEW:** This Agreement is made with reference to the following facts:

1.1 The City engaged WMB to provide construction services for the project known as the City of Calistoga Monhoff Building Alteration Project ("Project"), located in the City of Calistoga, California, pursuant to an August 2, 2016, contract between the Parties ("Construction Contract").

1.2 Pursuant to the Construction Contract, the Project was to be completed within 90 days, or by November 29, 2016.

1.3 The City approved a total of ten (10) change orders on the Project, and WMB requested and received approval for an additional 72 days to complete the work. The final change order approved by the City (Change Order #10) listed the total time for completion of the Project as 162 days.

1.4 The City Building Official issued a Temporary Certificate of Occupancy on June 29, 2017, which put the time of substantial completion of the Project at 303 days, 141 days beyond the approved time for construction. Per the Construction Contract, liquidated damages are set at \$800 for every calendar days' delay beyond the time prescribed to complete the work.

1.5 In a letter to WMB dated July 27, 2017, the City assessed \$112,800 in liquidated damages against WMB. Currently, the City has \$46,409.80 in retention, and \$10,079.80 is currently unpaid on the Contract, for a total of \$56,489.60 (collectively the "Retained Funds").

1.6 By this Agreement, the Parties wish to settle, resolve, and fully dispose of the City's claim for liquidated damages and WMB's claims for any additional payment for work related or incidental to the Construction Contract and/or Project (collectively, the "Claims").

2. **CONSIDERATION:**

2.1 For a final resolution of the Claims, the WMB shall pay the City a total of Forty Thousand Dollars (\$40,000) in the form of the Settlement Payment, defined below.

2.1.1 Within thirty (30) days of the Effective Date of this Agreement, the City shall issue and deliver a check to WMB from the Retained Funds for \$16,489.60. The City shall withhold and keep \$40,000 of the Retained Funds, which shall constitute the Settlement Payment.

3. **MUTUAL RELEASES:**

In consideration of the fulfillment of the terms and conditions contained herein, and for other good and valuable consideration, the receipt of which is acknowledged by each party hereto, the Parties promise, agree, and release as follows:

3.1 City Release. Except as to such rights or claims as may be created by this Agreement, the City hereby releases and discharges WMB and its respective agents, brokers, employees, representatives, predecessors, successors, assigns, parents, subsidiaries, related entities, sureties, consultants, advisors, officers, directors, board members, administrators, executors, shareholders, attorneys, and insurers, and each of them from, and relinquishes, extinguishes and waives as to such parties, any and all claims, counterclaims, disputes, demands, liabilities, controversies, causes of action, damages, costs, expenses and attorneys' fees of any kind or nature, whether legal or equitable, in tort or contract, actual or contingent, patent, known or unknown, asserted or unasserted, that it ever had, now has, or may have that in any way arise out of or relate, directly or indirectly, to the Claims.

3.2 WMB Release. Except as to such rights of claims as may be created by this Agreement, WMB hereby releases and discharges the City and its respective agents, brokers, employees, representatives, predecessors, successors, assigns, parents, subsidiaries, related entities, sureties, consultants, advisors, officers, directors, council members, board members, administrators, executors, shareholders, attorneys, and insurers, and each of them from, and relinquishes, extinguishes and waives as to such parties, any and all claims, disputes, demands, liabilities, controversies, causes of action, damages, costs, expenses and attorneys' fees of any kind or nature, whether legal or equitable, in tort or contract, actual or contingent, known or unknown, asserted or unasserted, that it ever had, now has, or may have that in any way arise out of or relate, directly or indirectly, to the Claims.

3.3 Reservation of Rights.

3.3.1 The City's waiver and release in Paragraph 3.1 shall not extend to, and shall not include, any claims arising out of or relating to patent or latent deficiencies that may exist with respect to the Project.

3.3.2 The City represents and warrants that as of the Effective Date of the Agreement, the City is not aware of any patent or latent deficiency within the Project, and is not aware of any facts or circumstances that reasonably indicate that a patent or latent deficiency may exist.

3.4 WMB specifically and expressly waive the benefit of the provisions of Section 1542 of the Civil Code of the State of California as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

3.5 WMB understands and acknowledges the significance and consequence of this specific waiver of the provisions of Section 1542 and hereby assume

full responsibility for any damage, loss, or liability that they may hereafter incur by reason of such waiver.

4. **REPRESENTATIONS AND WARRANTIES:** Each of the Parties to this Agreement represents and warrants to, and agrees with, each other party hereto, as follows:

4.1 Each party has been represented by legal counsel of its choosing, has received independent legal advice from its legal counsel with respect to the advisability of making the settlement provided for in this Agreement, with respect to the advisability of executing this Agreement, and with respect to the meaning of California Civil Code, Section 1542.

4.2 Each of the Parties represents that it has the authority to enter into this Agreement.

4.3 This Agreement is integrated and contains the entire agreement and understanding concerning the subject matter between the Parties, and supersedes and replaces all prior negotiations, proposed agreements, and agreements, written or oral. No party (nor any officer, agent, employee, representative, or attorney of or for any party) has made any statement or representation to any other party regarding any fact relied upon in entering into this Agreement. Each party expressly does not rely upon any statement, representation or promise of any other party (or of any officer, agent, employee, representative, or attorney for any other party) in executing this Agreement, or in making the settlement provided for in this Agreement, except as expressly stated in this Agreement.

4.4 Each of the Parties to this Agreement has made an extensive independent investigation of the facts pertaining to the provisions of this Agreement, and of all the matters pertaining thereto, as it deems necessary.

4.5 No party has assigned, transferred, hypothecated, or granted, or purported to assign, transfer, hypothecate, or grant, any of the claims, demands, causes of action or rights of appeal disposed of or assigned by this Agreement or its exhibits except as provided herein.

4.6 Each term of this Agreement is contractual and not merely a recital.

4.7 Each party is aware that it may hereafter discover claims, defenses, or facts in addition to or different from those it now knows or believes to be true with respect to the matters related to the Claims or this Agreement. By executing this Agreement, the Parties intend to fully, finally, and forever settle such matters, and all claims, disputes, demands, liabilities, controversies, causes of action, damages, costs, expenses and attorneys' fees of any kind or nature relative to the Claims, which do exist, may exist, or heretofore have existed between them; *except* as described in Section 3.3 above. In furtherance of the Parties' intent, the releases given herein will be, and remain, in effect as full and complete releases of all such matters, notwithstanding the discovery or existence of any additional or different claims, defenses, or facts relative to the Claims; *except* as described in Section 3.3 above.

5. **MISCELLANEOUS:**

5.1 **Voluntarily Executed.** This Agreement is being entered into and executed by the Parties voluntarily.

5.2 **No Waiver.** The waiver of any term, condition or covenant by any party, or breach thereof, shall not constitute a waiver with respect to that term at any future time or with respect to any other term, condition or covenant, or breach thereof, except as otherwise provided in this Agreement.

5.3 **Severability.** Should any part, term, or provision of this Agreement be decided or declared by the Courts to be, or otherwise found to be, illegal or in conflict with any laws of the State of California or the United States, or otherwise be rendered unenforceable, or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and will not be effected thereby, providing such remaining parts, terms, portions or provisions can be construed in substance to constitute the agreement that the Parties hereto intended to enter into in the first instance.

5.4 **No Adverse Construction of Agreement.** This Agreement is the product of negotiation and preparation by and among each party and their respective attorneys. The Parties acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one party or the other and should be construed accordingly.

5.5 **Governing Law.** In the event of litigation relating to this Agreement, California law shall govern this Agreement.

5.6 **Effective Date of Agreement.** This Agreement is made and entered into on and as of the last date executed herein, which will be the Agreement's Effective Date.

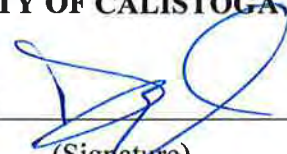
5.7 **Counterparts.** This Agreement may be signed in counterparts, which together shall constitute the entire Agreement. Each party may sign this document and transmit its signature by means of facsimile or .pdf sent by electronic mail, which signature shall be binding for all purposes.

(Signatures on following page)

DATED: Feb 21, 2018

CITY OF CALISTOGA

By


(Signature)

Dylan Feik
(Print Name)

Title: City Manager

DATED: February 14, 2018

WMB GENERAL CONTRACTORS

By


(Signature)

Gina Tonelli

(Print Name)

Title: CFO

**MASTER FUNDING AGREEMENT
THE NAPA VALLEY TRANSPORTATION AUTHORITY – TAX AGENCY
AND
THE CITY OF CALISTOGA**

NVTA-TA AGREEMENT NO. 2018-02 *068*

RECIPIENT AGREEMENT NO. 760

This Master Funding Agreement (“Agreement”) is made this 21 day of February, 2018, by and between the Napa Valley Transportation Authority – Tax Agency, a local transportation authority authorized by the provisions of Division 19 of the California Public Utilities Code, hereinafter referred to as “NVTA-TA”, and Napa County, hereinafter referred to as “Recipient.”

SECTION 1. RECITALS

1. The voters of Napa County approved the Napa Countywide Road Maintenance Act (also known as, and hereinafter referred to as, “Measure T,” “the Measure,” or “Ordinance No. 2012-01”) at the General Election held on November 6, 2012, thereby authorizing NVTA-TA to administer the proceeds from a one-half cent transaction and use tax.
2. The tax proceeds will be used to pay for the projects eligible under Measure T (Ordinance No. 2012-01) submitted by and allocated to Napa County and the cities and town within Napa County (“Local Agencies”) as set forth in Measure T as approved by Local Agencies’ Board or Councils and by the NVTA-TA.
3. Under Measure T and the Expenditure Plan, Measure T funds are provided to the Local Agencies to be used for streets and roads maintenance projects as defined in the Measure.

SECTION 2. PURPOSE OF FUNDING AGREEMENT

This Agreement is entered into by and between NVTA-TA and Recipient to document the funding conditions necessary for the Recipient to receive sales tax disbursements. This Agreement includes additional documents, listed in Section 30 of this Agreement, which are listed herein for reference.

SECTION 3. CLASS 1 BIKE FACILITY FUNDING. In order to receive funding under this Agreement, the Local Agencies must demonstrate to NVTA-TA that they have collectively committed eligible revenues totaling at least 6.67% of the value of the total annual allocations of Measure T funds to Class 1 Bike Facility projects identified in the adopted Countywide Bicycle Plan, as that Plan may be amended from time to time and as provided in the Measure.

SECTION 4. MAINTENANCE OF EFFORT. Prior to January 1, 2018, Recipient shall determine and certify to NVTA-TA the average maintenance of effort for Fiscal Years 2007-08, 2008-09, and 2009-10, consistent with the criteria set forth in Section 9 of Ordinance No. 2012-01, including a memorandum detailing the supporting financial documentation and the

methodology utilized to calculate the average fiscal year street and roads costs. That amount will be deemed Recipient's "Maintenance of Effort," which must be maintained annually throughout the term of the Measure from the Recipient's General Fund. At the beginning of each fiscal year, Recipient must certify to NVTA-TA that it will meet its Maintenance of Effort expenditures that fiscal year. By January 1st each calendar year, Recipient must provide to NVTA-TA a copy of a Resolution approved by Recipient's governing body, along with backup documentation, which may include California State Controller's Annual Street Report, showing that the Maintenance of Effort was met the prior fiscal year. In the event Recipient does not meet its requirement for local Maintenance of Effort over a three year average period, NVTA-TA shall reduce Recipient's allocation for the following fiscal year in an amount equal to the deficiency in the Maintenance of Effort. Any such reduction based on a deficiency in the Maintenance of Effort will be withheld by NVTA-TA until a plan to meet the Maintenance of Effort amount moving forward has been approved by NVTA-TA. Any funds not allocated due to failure to meet the maintenance of effort requirement shall be reserved for the Agency until any and all maintenance of effort expenditures are fulfilled.

SECTION 5. FIVE-YEAR LIST OF PROJECTS. No later than March 1, 2018, and at least biennially thereafter on January 1st, Recipient shall provide NVTA-TA its Measure T five-year list of projects (hereinafter "Project List").

SECTION 6. ALLOCATION & DISBURSEMENT

No later than the 20th day following the end of each quarter, the Recipient shall be allocated the funding allotted to Recipient as defined by Measure T, provided Recipient has complied with the terms of this Agreement. The allocated funds will be disbursed to Recipient upon NVTA's determination that the projects are consistent with the Recipient's approved Project List and in conformance with the Accounting, Reporting and Auditing Guidelines.

SECTION 7. COST ELIGIBILITY

Cost eligibility shall be determined by NVTA-TA based upon Recipient's approved Project List. Funds may be expended only for streets and roads project(s) included on the Recipient's approved Project List.

SECTION 8. BUDGET AND SCOPE

Recipient shall maintain a project(s) or program budget. Recipient shall carry out the project(s) and shall incur obligations against and make disbursements of Measure T revenues in conformity with the requirements of this Agreement and the budget.

SECTION 9. PROJECT MANAGEMENT

Recipient shall be responsible for the project(s) and provide for the management of consultant and contractor activities for which Recipient contracts, including responsibility for schedule, scope, and budget.

SECTION 10. PROJECT OVERSIGHT

Recipient shall cooperate with NVTA-TA staff or its Measure T consultants for project information and financial information necessary to fulfill the requirements outlined in NVTA-TA Ordinance No. 2012-01.

SECTION 11. ATTRIBUTION AND SIGNAGE

If any portion of Measure T revenues is used for production of reports, acknowledgment of the NVTA-TA's role shall be included in the documents. If any project(s) funding receives \$250,000 or more, Recipient shall, upon initiation of field work or at the earliest feasible time thereafter, install and maintain a sign or signs at the construction site, utilizing the adopted Measure T logo and text, identifying the Recipient and NVTA-TA. Recipient shall demonstrate compliance with attribution and signage requirements as an indispensable condition for authorization of future Measure T allocations. Recipient may provide signage for projects with a value of less than \$250,000 if they so desire.

SECTION 12. PRESS RELEASES

Recipient shall notify NVTA-TA in advance of any press releases about project(s) and program activities, particularly groundbreakings and ribbon cuttings, in connection to Measure T revenues expended from this Agreement.

SECTION 13. COMPLIANCE WITH LAW

In the performance of its obligations pursuant to this Agreement, Recipient shall keep itself fully informed of the federal, state and local laws, ordinances and regulations in any manner affecting the performance of this Agreement, and must at all times comply with such laws, ordinances, and regulations as they may be amended from time to time.

SECTION 14. ENVIRONMENTAL COMPLIANCE

Recipient shall comply with the requirements under the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.; as implemented through California Code of Regulations Title 14, Chapter 3, Sections 15000 et seq.).

SECTION 15. FINANCES

All costs charged to the project(s) shall be supported by properly prepared and documented time records, invoices, vouchers, or other documentation evidencing in detail the nature and propriety of the charges.

SECTION 16. RECORDS

All checks, payrolls, invoices, contracts, vouchers, journal entries, work orders, or other accounting documents pertaining in whole or in part to the project(s) shall be maintained by Recipient for a period of five (5) years after the later of project(s) closeout or termination of

Agreement. Such project(s) documents shall be clearly identified, readily accessible, and, to the extent feasible, kept separate and apart from all other similar documents not pertaining to the project(s).

SECTION 17. ELIGIBLE EXPENSES

Recipient shall expend funds only on eligible direct expenses as follows: operating costs, direct staff time (salary and benefits), material costs related to construction of improvements, consultants; right of way engineering and acquisition costs (including permitting), and competitively bid construction contracts. Funds shall also be expended according to the applicable provisions of Measure T and of the Public Utilities Code Section 180000 et seq.

NVTA-TA shall provide notice to Recipient of any audit determination if any expenditure made by Recipient is found not to comply with the Expenditure Plan or Measure T promptly after NVTA-TA becomes aware of any such finding.

SECTION 18. AUDITS

Recipient shall cooperate with and allow NVTA-TA's Auditor, or any of its duly authorized representatives, to inspect all work, materials, payrolls, and other data and records with regard to the Measure T projects, and to audit the books, records, and accounts of the Recipient and its contractors. Recipient shall see Accounting, Reporting and Auditing Guidelines (Exhibit C).

SECTION 19. THIRD PARTY CONTRACT AUDITS

NVTA-TA reserves the right to request an audit of other third party contracts for any reason related to Measure T. If Recipient is subject to third party financial audit requirements imposed by another funding source, for a project(s) related to Measure T, copies of audits performed in fulfillment of such requirements shall be provided to the NVTA-TA upon request by NVTA-TA.

SECTION 20. PROJECT REPORTING AND CLOSEOUT PROCEDURES

Recipient shall provide to NVTA-TA a Semi-Annual Update on Expenditures as show in Accounting, Reporting and Auditing Guidelines (Exhibit C).

SECTION 21. INDEMNIFICATION

To the fullest extent permitted by law, NVTA-TA and Recipient shall each defend, indemnify and hold harmless each other as well as their respective officers, agents, employees, volunteers or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages or expenses of every name, kind and description, including litigation costs and reasonable attorney's fees incurred in connection therewith, arising out of or connected with any acts or omissions of that party or its officers, agents, employees, volunteers, or contractors or their subcontractors, when performing any activities or obligations required of that party under this Agreement. Each party shall notify the other party immediately in writing of any claim or

damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

SECTION 22. INTEGRATION

This Agreement represents the entire agreement of the parties with respect to the subject matter thereof. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.

SECTION 23. AMENDMENT

Except as otherwise provided herein, this Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

SECTION 24. INDEPENDENT AGENCY

Recipient performs the terms and conditions of this Agreement as an entity independent of NVTA-TA. None of Recipient's agents or employees shall be agents or employees of NVTA-TA. No third parties have any rights or remedies under this Agreement.

SECTION 25. ASSIGNMENT

The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other party.

SECTION 26. BINDING ON SUCCESSORS, ASSIGNEES OR TRANSFEREES

This Agreement shall be binding upon the successor(s), assignee(s) or transferee(s) of NVTA-TA or Recipient, as may be the case. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement other than as provided above.

SECTION 27. LEGAL EXPENSES

Each party shall be solely responsible for and shall bear all of its own respective legal expenses in connection with any dispute arising out of this Agreement and the transactions hereby contemplated. Recipient may not use Measure T funds, or other NVTA-TA or NVTA programmed funds, for the aforementioned purpose.

SECTION 28. SEVERABILITY

Should any part of this Agreement be declared unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decisions shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect; provided that the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

SECTION 29. ACCEPTANCE OF ALLOCATION

Recipient does hereby declare that all written statements, representations, covenants, and materials submitted as a condition of this Agreement are true and correct and does hereby accept NVT-A-TA's allocations and agrees to all of the terms and conditions of this Agreement. The parties have executed this Agreement as of the date first written above, and it shall remain in effect until such time as no Measure T revenues remain available for expenditure, or until this Agreement is rescinded in accordance with Section 23 of this Agreement.

SECTION 30. EXHIBITS

The following Exhibits are hereby referenced to provide guidance to the jurisdictions and Measure T process and procedures:

EXHIBIT A: Measure T Ordinance and Expenditure Plan

EXHIBIT B: Five-Year Project List Template

EXHIBIT C: Accounting, Reporting and Auditing Guidelines

EXHIBIT D: Project List Adoption Resolution Template

EXHIBIT E: Progress Report Template

EXHIBIT F: MOE Certification Resolution Template

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

Napa Valley Transportation Authority – Tax Agency

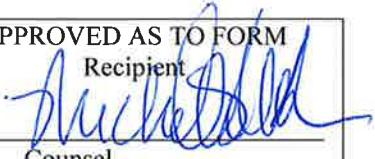
By: 
Kate Miller
NVRTA-TA Executive Director

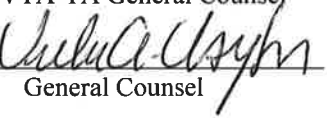
Date: 4/18/18

Recipient

By: 

Date: 2/21/18

APPROVED AS TO FORM Recipient
By: 
Counsel
Date: <u>2/26/2018</u>


APPROVED AS TO FORM NVRTA-TA General Counsel
By: 
General Counsel
Date: _____



**STATE OF CALIFORNIA
COUNTY OF NAPA
CITY OF CALISTOGA**

I, Kathy Flamson, City Clerk of the City of Calistoga, do hereby certify that the attached is a true and correct copy of Resolution No. 2018-015 regarding projects under Measure T Program.

IN WITNESS WHEREOF, I have hereunto set my hand and the official Seal of the City of Calistoga on this 28th day of February 2018.


**Kathy Flamson, City Clerk
City of Calistoga**

RESOLUTION NO. 2018-015

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA,
COUNTY OF NAPA, STATE OF CALIFORNIA APPROVING PROJECTS
UNDER MEASURE T PROGRAM; AND DETERMINING THAT THE
ACTION AUTHORIZED BY THIS RESOLUTION ARE EXEMPT FROM
THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

WHEREAS, on November 6, 2012 the voters of Napa County passed the Napa Countywide Road Maintenance Act, also known as Measure T, which imposes a half cent transaction and use (sales) tax to provide supplemental funding for road maintenance as detailed in Ordinance 2012-01 of the Napa Valley Transportation Authority – Taxing Authority (the Measure T Expenditure Plan); and

WHEREAS, the Napa Valley Transportation Authority-Taxing Authority (NVT-A-TA) is the designated agency that administers and oversees the Measure T revenues; and

WHEREAS, the City of Calistoga is an eligible recipient of Measure T funds; and

WHEREAS, the tax proceeds will be used to pay for the projects outlined in the Measure T Expenditure Plan allocated to the County of Napa and the cities and town within Napa County (“Local Agencies”) as set forth in Measure T Expenditure Plan; and

WHEREAS, under the Measure T Expenditure Plan, Measure T funds are provided to the Local Agencies to be used for streets and roads projects as defined in the Measure T Expenditure Plan; and

WHEREAS, the projects anticipated to be funded by the Measure T revenues are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 because they are repair, maintenance or minor alteration of existing facilities involving no or negligible expansion of use beyond that which presently exists; and

WHEREAS, the City of Calistoga intends to enter into a Master Funding Agreement with NVT-A-TA that outlines procedures for Measure T expenditures, and

WHEREAS, the City of Calistoga provided a draft five-year project list to NVT-A-TA for the expenditure of Measure T funds as required by the Measure T Expenditure Plan; and

WHEREAS, it is anticipated that it will be determined by the NVT-A-TA Board that these expenditures meet the requirements of the Measure T Expenditure Plan and the Master Funding Agreement;

WHEREAS, Measure T project(s) will comply with the requirements under the California Environmental Quality Act (California Code Sections 21000 *et seq.*; as

implemented through California Regulations Title 14, Chapter 3, Sections 15000 *et seq.*); and

WHEREAS, The Calistoga City Council has considered all information related to this matter, as presented at a public hearing of the Calistoga City Council, including any supporting reports by City staff, and any information provided during the public hearing.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Calistoga as follows:

1. The City Council hereby finds that the facts set forth in the recitals to this Resolution are true and correct and establish the factual basis for the City Council's adoption of this Resolution.
2. The City Council finds that the projects anticipated to be funded by the Measure T revenues are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 because they are repair, maintenance or minor alteration of existing facilities involving no or negligible expansion of use beyond that which presently exists.
3. The City Council hereby adopts the five-year project list for the City of Calistoga as set forth in Exhibits "A" and "B" and authorizes the Public Works Director to file the list with NVT-A-TA in accordance with Section 6 of the Measure T Expenditure Plan.
4. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Calistoga at a regular meeting held this **20th day of February 2018**, by the following vote:

AYES:	Councilmember Kraus, Vice Mayor Dunsford, Councilmembers Lopez-Ortega and Barnes and Mayor Canning
NOES:	None
ABSTAIN:	None
ABSENT:	None



CHRIS CANNING, MAYOR

ATTEST:



KATHY FLAMSON, City Clerk

SOFTWARE AS A SERVICE & PROFESSIONAL SERVICES AGREEMENT

BETWEEN

PERFECTMIND INC.

AND

CITY OF CALISTOGA, CA

DATED: MARCH 1, 2018

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Exhibits:

- Exhibit A – Platform Use Fees
- Exhibit B – Statement of Work
- Exhibit C – PerfectMIND Rates for Professional Services
- Exhibit D – Service Levels
- Exhibit E – Platform Features and Functionalities

SOFTWARE AS A SERVICE & PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is dated MARCH 1, 2018

BY AND BETWEEN:

PerfectMIND Inc.
(**"PerfectMIND"**), a British Columbia
corporation having an office at:

2nd Floor, 4333 Still Creek Drive
Burnaby, British Columbia
V5C 6S6

AND

City of Calistoga, CA
(**"Customer"**), a California corporation
having an office at:

1232 Washington St.
Calistoga, California
94515 USA

WHEREAS PerfectMIND wishes to license to Customer, and Customer wishes to use and license from PerfectMIND, the Platform (as defined herein) on the terms and conditions set out in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

PART 1—DEFINITIONS AND INTERPRETATION

1.1 Definitions. In this Agreement, unless the context otherwise requires, capitalized terms will have the meaning assigned to them herein, including the following:

- (a) **"Account"** has the meaning set out in §5.6;
- (b) **"Account-holder"** means an individual designated by Customer to whom an Account is issued;
- (c) **"Applicable Laws"** means all applicable laws and regulations, including all applicable local, provincial, state, national and foreign laws, treaties and regulations as well as orders of courts or laws, regulations, by-laws or ordinances of applicable governmental agencies;
- (d) **"Claims"** means liabilities, actions, proceedings, claims, causes of action, demands, debts, losses, damages, charges and costs, including reasonable legal costs, any amount paid to settle any action or to satisfy a judgment and expenses of any kind and character whatsoever incurred in connection therewith;
- (e) **"Confidential Information"** has the meaning set out in §8.1;
- (f) **"Content"** means all materials and content, including designs, editorials, text, graphics, audiovisual materials, multimedia elements, photographs, videos, music, sound recordings, reports, documents, software, information, formulae, patterns, data and any other work, and

“Customer Content” is Content entered, uploaded or inputted into the Platform by or on behalf of Customer;

(g) **“Customer Data”** means information, materials, or data, including Customer Content, entered, uploaded or inputted into the Platform by or on behalf of Customer;

(h) **“Enhancement”** means enhancements, developments, modifications, updates, additions and improvements made to the Platform, other than New Features and Functions;

(i) **“Force Majeure”** means circumstances beyond a party’s reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labour problems, or Internet service provider failures or delays, or hosting service provider failures or delays;

(j) **“Intellectual Property Rights”** means any and all (i) proprietary rights provided under patent law, copyright law, trade-mark law, design patent or industrial design law, semi-conductor chip or mask work law, or any other applicable statutory provision or otherwise arising at law or in equity, including, without limitation, trade secret law, that may provide a right in works, software, source code, object code, marks, ideas, formulae, algorithms, concepts, methodologies, techniques, inventions, or know-how, or the expression or use thereof, (ii) applications, registrations, licenses, sublicenses, agreements, or any other evidence of a right in any of the foregoing, and (iii) past, present, and future causes of action, rights of recovery, and claims for damage, accounting for profits, royalties, or other relief relating, referring, or pertaining to any of the foregoing;

(k) **“New Features and Functions”** means any update, revision, new version, new module or upgrade of the Platform made available by PerfectMIND from time to time (i) that adds new functions or features to the Platform and (ii) for which PerfectMIND charges a fee to its customers in order to obtain same;

(l) **“PerfectMIND Privacy Policy”** means PerfectMIND’s privacy policy made available at <http://www.perfectmind.com/academy/privacy> as amended from time to time;

(m) **“PerfectMIND Technology”** means (i) any concepts, inventions, systems, processes, techniques, methodologies, know-how, data, tools, templates, technology (including software in executable code and source code), documentation or any other information, data or materials, and any expressions of the foregoing, developed by, owned by, or licensed to, PerfectMIND; and (ii) the Work Product;

(n) **“Permitted Purpose”** means managing and operating Customer’s facilities located in the City of Calistoga, California, including customer relationship management, facility bookings, membership sales, point of sale transaction processing and scheduling;

(o) **“Platform”** means the software and supporting hardware platform known as “PerfectMIND” that is owned and operated by PerfectMIND, and that will be made available to Customer as a service under this Agreement via a designated website or websites as may be designated by PerfectMIND, from time to time, together with the related documentation, Content (other than Customer Content and Customer Data) and end user materials delivered therewith;

- (p) “**Professional Services**” has the meaning set out in §3.1;
- (q) “**Statement of Work**” has the meaning set out in §3.1;
- (r) “**Term**” has the meaning set out in §7.1; and
- (s) “**Work Product**” means all improvements, enhancements and derivatives thereto developed by PerfectMIND for the purposes of providing the Professional Services under this Agreement or otherwise and any and all other work products developed by PerfectMIND for the purposes of providing the Professional Services under this Agreement.

1.2 Interpretation. In this Agreement, unless expressly stated otherwise or the context otherwise requires, (a) headings and captions are for convenience only and will not be deemed to explain, limit or modify the provisions hereof, (b) the word “**including**”, when following a general statement or term, is not to be construed as limiting the general statement or term (whether or not used in connection with phrases such as “without limitation” or “but not limited to”) and the word “**or**”, when connecting two or more matters, will not imply an exclusive relationship between the matters, (c) a reference to a “**person**” or “**entity**” means an individual, corporation, body corporate, firm, limited liability company, partnership, syndicate, joint venture, society, association, trust or unincorporated organization or governmental authority or trustee, executor, administrator or other legal representative, including any successor to that person, (d) a word importing the masculine gender includes the feminine and neuter, a word in the singular includes the plural, a word importing a corporate entity includes an individual, and vice versa, (e) words, phrases and acronyms not otherwise defined herein that have a meaning commonly understood and accepted by persons familiar with the Internet and computing services professionals will be interpreted and understood to have that meaning herein, and (f) in the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Exhibits hereto, the terms of the Exhibits hereto will prevail to the extent necessary to resolve such conflict or inconsistency.

PART 2—LICENSE

2.1 License. PerfectMIND grants to Customer a non-exclusive, non-transferable, right and limited license, only during the Term, to access and use the Platform for the Permitted Purposes only. All rights not expressly granted to Customer are reserved by PerfectMIND and, if applicable, its licensors.

2.2 Complete Software; Enhancements. Upon completion of the Professional Services described in the Statement of Work attached to this Agreement as Exhibit B, the Platform with the features and functionalities described in Exhibit E attached to this Agreement will be configured and made available to Customer for access and use by Account-holders. Customer agrees that its entry into this Agreement is not contingent on the delivery of any future functionality or features by PerfectMIND. PerfectMIND may, from time to time and at its sole discretion, update the Platform (including the underlying server software or hardware) or otherwise offer Enhancements, which Enhancements will form part of the Platform being licensed and provided hereunder without further payment by Customer. PerfectMIND will use commercially reasonable efforts to (a) ensure that such Enhancements are compatible with and will not adversely affect or reduce the functionality, performance, availability and accessibility of the Platform, and (b) to the

extent that such Enhancements do so adversely affect the Platform and Customer notifies PerfectMIND of same, restore or reinstate the Platform or parts of it causing the adverse effects to its or their status prior to the Enhancement, as soon as may be reasonable and practicable in the circumstances. Notwithstanding any Enhancements or other changes to the Platform, PerfectMIND will maintain the functionality of the Platform so it is always materially equal to or better than the functionality of the Platform as of the date that Customer first commences using the Platform.

2.3 New Features and Functions. PerfectMIND may, from time to time and in its sole discretion, develop and offer New Features and Functions that will not form part of the Platform licensed hereunder and may be provided and licensed separately to Customer for an additional fee. For clarity, in no event will PerfectMIND be obligated to provide any New Features and Functions free of charge.

PART 3—PROFESSIONAL SERVICES

3.1 Professional Services. Customer may, from time to time, request PerfectMIND to provide customization and deployment services and other related professional services in relation to Customer's use of the Platform (the "**Professional Services**") and PerfectMIND may, in its discretion, agree to provide the Professional Services. Upon agreement on the particulars of the Professional Services, including the fees payable by Customer to PerfectMIND for the Professional Services, such particulars shall be included in a statement of work (a "**Statement of Work**"), which shall be signed by PerfectMIND and Customer, and which shall form a schedule to and be incorporated into and form part of this Agreement. To the extent that there is any inconsistency between any provision in any Statement of Work and the rest of this Agreement, the terms of such Statement of Work will prevail. Each Statement of Work may contain, unless the parties agree otherwise, a description of the work to be conducted, the functional requirements and technical specifications applicable to the work, the work schedule and milestones, the deliverables and delivery schedule, acceptance criteria, and such other information and additional terms and conditions as the parties may mutually agree upon. As of the date of this Agreement, PerfectMIND and Customer have agreed upon the Professional Services described in the Statement of Work attached to this Agreement as Exhibit B.

3.2 Change Orders. Customer may, from time to time, request changes to the scope of the Professional Services described in a Statement of Work. In response to any such request from Customer, PerfectMIND shall determine the feasibility of providing such changes and shall estimate the increase in the total fees payable for providing such changes to the Professional Services. Following receipt of PerfectMIND's response to Customer's request, the parties shall negotiate an amended Statement of Work which sets out the changes to the Professional Services and the additional fees payable in respect thereof.

3.3 Customer's Responsibilities. The work functions and tasks relating to the Professional Services for which Customer or a third party shall be responsible shall be described in the Statement of Work. Customer agrees to perform and cause the third party to perform such work functions and tasks in a timely fashion. Customer agrees to provide or make available and cause any third party identified in the Statement of Work as being responsible for any function or

task in any way related to the Professional Services to provide or make available all information reasonably requested by PerfectMIND to perform the Professional Services. PerfectMIND will not be liable for loss or damage arising from reliance on any such information.

3.4 Project Teams. Each party will be solely responsible for staffing its project team for the performance of the Professional Services by PerfectMIND and relating work functions and tasks by Customer as described in a Statement of Work. Each member of a project team will possess skills and knowledge appropriate to the work functions to be performed by that team member. Either party may, by way of replacement or addition, make changes to the personnel assigned to its project team, provided that each replacement team member shall possess skills and knowledge at least equivalent to the project-related skills and knowledge of the team member being replaced. Each party shall appoint a project manager in respect of its project team. The project managers shall be available for weekly meetings to review the progress of the Professional Services.

3.5 Use of Customer's Facilities. For Professional Services to be performed at the Customer premises, Customer will provide all work space, facilities and support that are reasonably requested by PerfectMIND to perform such Professional Services, including without limitation, secretarial support, telephone, and computer facilities.

3.6 No Liability for Others' Failure to Perform. Customer agrees and acknowledges that PerfectMIND's performance of the Professional Services will be conditional upon, and subject to, Customer's performance of its obligations hereunder and the performance by any third party identified in the Statement of Work of its functions and task to the extent that such functions and task relate to the Professional Services, and that PerfectMIND will not be liable or responsible, in any manner or to any extent, for any failure of PerfectMIND to perform all, or any part of, the Professional Services to the extent that any such failure is caused by a failure of Customer to perform its obligations or the third party to perform its functions and tasks.

3.7 Third Party Hardware/Software. Customer will be solely responsible for the evaluation, selection, installation, implementation, compatibility, use and performance of and results obtained from any hardware, systems software, utility software, security software, telecommunication equipment or software, and applications software used in connection with the Professional Services, unless (and only to the extent) otherwise expressly agreed in this Agreement. Except as expressly provided in this Agreement, Customer and/or the third party vendors of the software packages selected for use by Customer will be responsible for the installation, acceptance and performance of the selected software packages.

3.8 Third Party Products. Where the Professional Services to be provided by PerfectMIND involve the acquisition by Customer of products of third parties, PerfectMIND will not be responsible for delays in the delivery of such products by third parties or for such product's faulty quality, defective performance, or failure to perform in accordance with published specifications or accepted standards. PerfectMIND will transfer to Customer any transferable warranties provided to PerfectMIND by third parties. PerfectMIND makes no independent representations or warranties with respect to products provided by third parties. Any third party warranties are the exclusive remedies of Customer with respect to such products.

3.9 Use of Subcontractors. Customer acknowledges that PerfectMIND may engage agents and subcontractors to perform any of the Professional Services described in a Statement of Work. PerfectMIND shall be responsible for the fulfillment of its obligations hereunder, notwithstanding the performance of any of its obligations by its agents and subcontractors.

3.10 No Recruitment. Customer agrees that during the term of this Agreement, and for a period of one (1) year thereafter, it will not, without the prior written consent of PerfectMIND, hire, retain or engage, or make an offer in respect of same to, any employee, independent contractor or consultant of PerfectMIND.

PART 4—FEES AND PAYMENTS

4.1 Platform Use Fees. Customer will pay all fees and charges in connection with the use of the Platform in accordance with Exhibit A, which forms an integral part hereof and is incorporated herein by reference.

4.2 Platform Use Billing. The fees payable by Customer for use of the Platform in each twelve (12) month period is payable in advance at the beginning of such period. PerfectMIND will invoice Customer for such fees at the beginning of each 12 month period, and Customer will pay each invoice within thirty (30) days after the date of the invoice; provided that the entire fee for the first twelve-month period in the Term is payable and due upon the signing of this Agreement. All amounts due by Customer hereunder will be paid, unless otherwise expressly set out herein, without any deduction, adjustment or set-off whatsoever.

4.3 Taxes. Fees for use of the Platform do not include any taxes, and Customer agrees to pay all applicable sales, use, value-added and other taxes or similar nature based on or due as a result of any amounts paid to PerfectMIND under this Agreement.

4.4 Late Payments. If PerfectMIND does not receive payment in full of an invoice within 30 days after the date of such invoice and Customer fails to make full payment within ten (10) days after written notice of the non-payment is given by PerfectMIND, Customer will be deemed to be in default. Customer will pay any and all collection costs incurred by PerfectMIND in collection of outstanding debts. In addition to any other rights granted to PerfectMIND herein and available to PerfectMIND at law or in equity, PerfectMIND reserves the right to suspend the Accounts and Customer's right to use and access to the Platform if Customer is in default with respect to its payment obligations. PerfectMIND reserves the right to impose a reconnection fee upon reactivation if any such suspension takes place.

4.5 Professional Services Fees. If the Professional Services are to be provided on a fixed price basis, the Statement of Work will set out the total contract price, a payment schedule, including the fees payable in respect of each deliverable and/or milestone, as applicable. If the Professional Services are to be provided by PerfectMIND on a time and materials basis, the rate(s) in Exhibit C attached hereto will apply. PerfectMIND may, from time to time and upon sixty (60) days' notice to Customer, amend the rate(s) for Professional Services. Per diem rates shall be based on a 7.5 hour day. Once a Statement of Work is signed by the parties, the rates structure in effect at the time of the signing of the Statement of Work shall apply for the duration of the project described in the Statement of Work. PerfectMIND's fees for Professional Services (whether fixed

or based on time and materials) do not include any travel, living or any other out-of-pocket expenses incurred by PerfectMIND or its subcontractors in providing Professional Services. Customer will pay PerfectMIND a flat rate of \$550 per day per PerfectMIND employee or subcontractor who provides on-site Professional Services to Customer to cover accommodation, meal, local transportation and other out-of-pocket expenses, except travel (airfare) expenses. Customer will reimburse PerfectMIND for all reasonable travel (airfare) expenses incurred by PerfectMIND's to send its employees and subcontractors to Customer's site. All such travel (airfare) expenses for which PerfectMIND seeks reimbursement will be supported by documentation in a form reasonably acceptable to Customer.

4.6 Professional Fee Billing. PerfectMIND will invoice Customer for the Professional Services according to the payment terms specified in the Statement of Work, or if no payment term is specified in the Statement of Work, on a monthly basis, and Customer will pay each invoice within fifteen (15) days after receipt of invoice, unless the parties agree otherwise in writing. Customer agrees to pay interest at the rate set out in the Statement of Work, or if none specified at 1.5% per month, on any unpaid amounts from the date due to the date upon which the balance is discharged, such interest to accrue from day to day and be compounded on a monthly basis, unless the parties agree otherwise in writing. The fees for the Professional Services to be performed pursuant to the Statement of Work attached hereto as Exhibit B are set out and shall be due and payable to PerfectMIND in accordance with the "Fee payment schedule" section of Exhibit B, upon Customer's receipt of PerfectMIND's invoices.

4.7 Taxes and Duties Relating to Professional Fees. All amounts payable in respect of the Professional Services rendered by PerfectMIND to Customer under this Agreement will be exclusive of all shipping charges, insurance charges, customs duties, sales taxes, value-added taxes, and any other like charges or taxes. Customer will be responsible for paying all such charges and taxes in connection with the provision of the Professional Services under this Agreement.

4.8 Currency. All prices in this Agreement are in United States (US) dollars.

PART 5—USE OF THE PLATFORM

5.1 PerfectMIND Responsibilities. PerfectMIND will provide the Platform in accordance with the service levels set out in Exhibit D. PerfectMIND will provide to Customer, at no additional charge, the support for the Platform described in Exhibit D. PerfectMIND will comply with all Applicable Laws in the performance of this Agreement.

5.2 Training. PerfectMIND will provide training to Customer's staff during the implementation period as provided in Exhibit B. This training may be in the form of in-person/on-site training or remote/online training. Customer's staff will also have access to all on-line training materials made available by PerfectMIND to its customers including live and pre-recorded webinars. Customer may purchase additional training at PerfectMIND's posted standard hourly rate for professional services. For additional training purchased by Customer, Customer will reimburse PerfectMIND for all reasonable travel and other out-of-pocket expenses incurred by PerfectMIND's employees and subcontractors in providing on-site training. All such expenses for

which PerfectMIND seeks reimbursement will be supported by documentation in a form reasonably acceptable to Customer.

5.3 Customer Responsibilities. Customer will (a) be responsible for Account-holders' compliance with all of the terms and conditions of this Agreement; (b) be solely responsible for the accuracy, quality, integrity and legality of Customer Data, including Customer Content, and of the means by which Customer Data is acquired and used, including compliance with all personal information privacy laws and regulations and ensuring that no third party Intellectual Property Rights are infringed; (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Platform, and notify PerfectMIND promptly of any such unauthorized access or use; and (d) use the Platform only for Permitted Purposes and in accordance with the documentation therefor and all Applicable Laws.

5.4 Prohibited Conduct. Customer will not

- (a) make the Platform available to anyone, or permit anyone to access the Platform, other than Account-holders;
- (b) license, sublicense, sell, resell, publish, republish, transfer, assign, distribute, rent, lease or time-share the rights granted to Customer under this Agreement, or copy or otherwise commercially exploit the Platform or its components in any way except in accordance with the rights granted hereunder;
- (c) use the Platform in any manner or for any purpose (i) that violates this Agreement, (ii) that contravenes, facilitates the violation of, or violates any Applicable Laws; (iii) that extracts, gathers, collects, or stores personal information about individuals except in compliance with all applicable personal information privacy laws or that involves data mining, robots or similar data gathering or extraction methods on individual's personal information without their express consent, or (iv) that interferes with or disrupts the integrity or performance of the Platform, PerfectMIND's systems or networks or third-party data of Content contained therein;
- (d) attempt to gain unauthorized access to the Platform or its related systems or networks;
- (e) post, upload, reproduce, distribute or otherwise transmit on the Platform (i) pyramid schemes, (ii) any material that contains a virus, cancelbot, Trojan horse, worm or other harmful, disruptive or surreptitious component, (iii) defamatory, infringing, indecent or unlawful software, materials or information, or (iv) inappropriate, profane, or obscene software, materials or information without suitable or lawfully-required access controls;
- (f) alter, modify, reverse engineer, decompile, or disassemble, translate, extract data structures from or otherwise attempt to extract the source code from the Platform or any part thereof;
- (g) create derivative works based on the Platform or works containing a substantial part of the Platform;

- (h) copy, frame or mirror any part or content of the Platform;
- (i) disable or circumvent any access control or related process or procedure established with respect to the Platform;
- (j) remove any copyright or other proprietary or Intellectual Property Rights notices or labels on or in the Platform or any part, copy or report generated therefrom or thereof;
- (k) use the Platform to scan or probe another computer system, obstruct or bypass computer identification procedures or engage in unauthorized computer or network trespass without the express permission of the owners of such computer systems;
- (l) access the Platform in order to (i) build a competitive product or service, or (ii) copy any ideas, features, functions or graphics of the Platform;
- (m) forge headers or otherwise manipulate any protocols or identifiers used in any system or protocol in such a manner to disguise the origin of any Content transmitted using the Platform;
- (n) impersonate or falsely represent an association with any person, including a PerfectMIND representative, without the prior express, written permission of such person; or
- (o) permit any of the foregoing to be done by any person, including Customer's employees, contractors, agents, or representatives, including Account-holders.

5.5 Commercial Electronic Messages. All email messages that Customer sends using the Platform will comply with all applicable anti-spam laws and regulations, including those relating to commercial electronic messages. When using the Platform, Customer will represent itself and/or its organization accurately and will not impersonate any other person, whether actual or fictitious. Customer specifically agrees that (to the extent that the Platform permits it, and it is within Customer's control to do so) for all messages that Customer sends using the Platform (i) the "from" line of the message will accurately and in a non-deceptive manner identify Customer's organization; (ii) the "subject" line of the message will not contain any deceptive or misleading content regarding the overall subject matter of the message, and (iii) the message will include the contact information of the Account-holder who sends the message or another individual within Customer's organization who may be readily contacted by the recipient, and such contact information will remain valid for at least 60 days after the message is sent. Customer will ensure that every message sent using the Platform will contain an "unsubscribe" link that allows recipient to remove himself/herself/itself from Customer contact list and specify an electronic address on the World Wide Web that can be accessed by the recipient of the message for the purpose of unsubscribing. Customer will promptly, and in any event no later than 10 days after the receipt of the request, give effect to any unsubscription requests it receives. Customer may not charge a fee, require the recipient to provide any personally identifying information beyond an email address, or make the recipient take any step other than sending a reply email or visiting a single page on an Internet website as a condition for giving effect to an unsubscribe request. Customer acknowledges that Customer will be responsible for maintaining and giving effect to the list of unsubscribe requests following termination of this Agreement.

5.6 Account Use. PerfectMIND will issue Accounts, or permit Customer to issue Accounts, to individuals selected by Customer as Account-holders. Only Account-holders may access or use the Platform and each Account-holder's access to the Platform requires valid login credentials, including at least user identification and secure passwords (each an "**Account**"). The rights of an Account-holder may not be used by more than one individual, unless the Account of the Account-holder is reassigned in its entirety to another Account-holder, in which case the prior holder of the Account shall no longer have any right to access or use the Platform. Customer acknowledges and agrees that Customer:

- (a) is fully responsible for Accounts assigned by or at the request of Customer and the acts and omissions of each Account-holder, including the creation of Account credentials by any person, the maintenance, confidentiality and security of all passwords related to Accounts, and any and all activities that occur under Accounts (including persons who gain access to such Accounts, whether with or without permission);
- (b) will notify PerfectMIND as soon as practicable after obtaining or receiving any knowledge of (i) any unauthorized use of an Account or any password related to an Account, or (ii) any other breach of security with respect to an Account, provided that such notification will not negate Customer's liability for any unauthorized use of an Account or password until such time as PerfectMIND can be reasonably expected to take corrective measures; and
- (c) will provide true, current, accurate and complete information as prompted by the Account-creation process or as otherwise requested by PerfectMIND from time to time and to promptly update such information when any changes occur so as to keep such information held by PerfectMIND true, current, complete and accurate.

5.7 Usage Limitations. The following provisions apply with respect to the Platform:

- (a) **General Practices and Limits.** Customer acknowledges and agrees that PerfectMIND may establish from time to time general practices and limits concerning the use of the Platform, including: the maximum size of any Customer Data, including Customer Content, that may be stored on PerfectMIND servers (the "**Storage Limit**"); the maximum amount, speed and type of Customer Data, including Customer Content, that may be sent from or received using the Platform (the "**Usage Limit**"). Such general practices and limits may be posted on PerfectMIND's website or otherwise made available through the Platform. Customer agrees that Customer's usage may not exceed such limits, and that it is Customer's responsibility to monitor Account usage of the Platform. PerfectMIND covenants that the Storage Limit and the Usage Limit set for Customer will not be less than the following:

Minimum Storage Limit

- Storage: 80GB (\$160 per month for every additional 80GB blocks of storage)

Usage Limit

- Accountholders: UNLIMITED
- Email: 25,000 emails per month (\$200 per month for additional 50,000 emails)

(b) **Internet-based Software.** The Platform depends on the Internet, including networks, cabling, equipment and facilities that are not in PerfectMIND's control; accordingly (i) any representation made by PerfectMIND regarding access performance, speeds, reliability, availability, use or consistency of the Platform, to the extent that they are dependent on the underlying Internet services, are on a "commercially reasonable efforts" basis, (ii) PerfectMIND cannot guarantee any minimum level regarding actual user performance, speed, reliability, availability, use or consistency based on factors depending on the Internet, and (iii) content, data, messages, information or materials sent over the Internet may not be completely private, and anonymity is not guaranteed.

PART 6—CONTENT, INTELLECTUAL PROPERTY AND PRIVACY

6.1 Reservation of Rights. All right, title and interest, including all Intellectual Property Rights, in and to the Platform and PerfectMIND Technology is and will at all times be fully vested in PerfectMIND or its licensors, as the case may be.

6.2 Third-Party Content—Content accessed or available through the Platform may be owned by third-parties other than PerfectMIND or Customer (collectively, "**Third Party Content**") and may be protected by applicable Intellectual Property Rights. During use of the Platform, Customer may enter into correspondence with, purchase goods, hardware or services from, or participate in promotions of advertisers or sponsors showing their goods or services through the Platform. Any such activities, and any terms, conditions, warranties or representations associated with such activities are solely between the applicable third party and Customer. PerfectMIND and its licensors shall have no liability, obligation or responsibility to Customer for any such correspondence, purchases or promotions. Customer acknowledges and agrees that Customer shall be solely responsible for obtaining necessary licenses, consent and permits from third-party providers with respect to any Third Party Content or ancillary software, hardware, or services that Customer may use in connection with its use of the Platform.

6.3 Feedback. From time to time during the term of this Agreement, Customer and Account-holders may provide PerfectMIND with comments, suggestions, ideas and impressions of the Platform ("**Feedback**"). Customer acknowledges and agrees that, by disclosing such Feedback to PerfectMIND, the provider thereof will be deemed to have granted to PerfectMIND a royalty-free, worldwide, transferable, sub-licensable, non-exclusive, irrevocable and perpetual license to use, modify, adapt, improve or incorporate such Feedback into the Platform. Customer acknowledges and agrees that the right to use the Platform is good and sufficient consideration for any contributions, through the Feedback or otherwise, to the design, improvement, or functionality of the Platform and the transfer to PerfectMIND thereof.

6.4 Customer Data. PerfectMIND does not claim ownership of, and assumes no liability or responsibility with respect to, any Customer Data, including Customer Content. As

between PerfectMIND and Customer, all right, title and interest (including Intellectual Property Rights) in and to Customer Data will at all times be fully vested in Customer, except that, by posting, uploading, inputting, providing, submitting, entering or otherwise transmitting Customer Data to PerfectMIND or any third party using the Platform, Customer agrees as follows:

- (a) Customer will have thereby granted PerfectMIND a royalty-free, non-exclusive, worldwide, fully paid-up limited license to use, copy, distribute, transmit, display, edit, delete, publish and translate such Customer Data to the extent reasonably required by PerfectMIND in connection with the functionality of the Platform and the performance of this Agreement as well as to ensure adherence to or enforce the terms of this Agreement;
- (b) Customer, and not PerfectMIND, will have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and Intellectual Property Rights of all Customer Data, and PerfectMIND will not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data; and
- (c) Customer will have thereby confirmed, represented and warranted to PerfectMIND that Customer has all rights, titles and interests (including all Intellectual Property Rights as well as the power and authority necessary), to grant the license to such Customer Data set above in subsection 6.4(a).

6.5 Privacy. PerfectMIND acknowledges and agree that Customer Data may contain sensitive information, and, in connection therewith, (a) PerfectMIND will comply with all Applicable Laws relating to personal information privacy, including British Columbia *Personal Information Protection Act* and will adhere to the PerfectMIND Privacy Policy, which forms an integral part hereof and is incorporated herein by reference; (b) PerfectMIND will use industry-standard management practices, technologies and security to protect the integrity, safety and security of Customer Data in both physical and electronic form; (c) Customer acknowledges and agrees that its use of the Platform will utilize, in whole or in part, the public Internet and third party networks to transmit communications, which transmissions may be intercepted by other parties or stored, cached, routed, transmitted or received in jurisdictions outside of the jurisdiction of Customer, (d) PerfectMIND will not use Customer Data for any purpose other than to provide the functionality of the Platform to Customer and its users, to ensure adherence to or enforce the terms of this Agreement, or (only in aggregate form) for site metrics; (e) PerfectMIND reserves the right to modify the PerfectMIND Privacy Policy and its security policies in its reasonable discretion from time to time, subject to any Applicable Laws.

6.6 Use of the Other Party's Name. Each party may use the other party's name in its news releases, marketing and promotional materials and the like provided that such will comply with any standards set by the other party from time to time. Each party will cease to use the other party's name upon any expiration or termination of this Agreement.

PART 7—TERM AND TERMINATION

7.1 Term. This Agreement commences on the date first set out above and will continue in effect for five (5) years thereafter, unless earlier terminated or renewed in accordance with the

provisions of this Agreement (the “**Term**”). At the expiration of the initial five year period, the Term will be automatically renewed for successive one year periods unless a party provides written notice to the other party of the first party’s intention not to renew, at least thirty days before the expiry of the then-current Term.

7.2 Renewal Terms. The fees payable by Customer during any such renewal term will be the same as the fee for the last year during the prior term unless PerfectMIND has given Customer written notice of a pricing change at least 90 days’ before the end of such prior term, in which case the pricing change will be effective upon renewal and thereafter.

7.3 Termination. Either party may terminate this Agreement for cause, immediately upon written notice to the other party, if:

(a) the other party is in default of any of its material obligations under this Agreement and such default is not remedied within thirty (30) days of the date of receipt of written notice thereof, provided that cure period with respect to default in payment obligations is ten (10) days; or

(b) the other party ceases to conduct business in the normal course; the other party becomes insolvent or bankrupt; the other party makes any assignment for the benefit of creditors; proceedings are instituted by or against the other party seeking relief, reorganisation or rearrangement under any laws relating to insolvency; a receiver, liquidator or trustee is appointed in respect of any property or assets of the other party; or an order is made for the liquidation, dissolution or winding up of the other party.

7.4 Payment on Termination. If this Agreement is terminated by Customer due to PerfectMIND’s default, then PerfectMIND will refund to Customer an amount equal to the fees actually paid by Customer for the year during which the termination occurs prorated based on the post-termination portion of the year. Otherwise, any termination of the Agreement will not relieve Customer of its obligation to pay the fees payable to PerfectMIND for the Term of the Agreement for the use of the Platform nor does it entitle Customer to any refund. Upon the termination of this Agreement, without prejudice to any other rights PerfectMIND may have, Customer will (a) remit all fees payable for the Professional Services and Work Products accepted by Customer prior to the date of such termination or suspension; (b) remit all fees payable for work-in-progress, on a time and materials basis, at the rate structure applicable to the Statement of Work Order; and (c) remit all such other costs of PerfectMIND, demonstrated to the reasonable satisfaction of Customer, directly related to the permanent or temporary winding down of the Professional Services, work and deliveries which are being terminated or suspended.

7.5 Return of Customer Data. Upon request by Customer made within 30 days after the effective date of termination or expiration of this Agreement (except in the case of PerfectMIND terminating this Agreement for cause under §7.3), PerfectMIND will make available to Customer for download a file of the relevant Customer Data in a commercially-reasonable standard (such as comma separated value (.csv) or extendible markup language (.xml)) format along with attachments in their native format as stored by PerfectMIND. After such 30-day period, PerfectMIND will have no obligation to maintain or provide any such Customer Data and will thereafter, unless legally prohibited, delete all such Customer Data in PerfectMIND systems or

otherwise in PerfectMIND's possession or under PerfectMIND's control. Within 15 days of any termination for cause of this Agreement by PerfectMIND pursuant to Section 7.3, Customer may request return of Customer Data, in which case Customer will pay to PerfectMIND any fees outstanding prior to the termination of this Agreement plus any fee that PerfectMIND requests, based on the time required to accommodate Customer's request regarding return of Customer Data, and upon receipt of such payments, PerfectMIND will make available Customer Data to Customer for download as set out above. If Customer does not make a request within the 15 day time limit or fails to make payments within five (5) days after receiving PerfectMIND's fee request, Customer's right to access or use Customer Data will immediately cease, and PerfectMIND will have no obligation to maintain or provide any Customer Data and will thereafter, unless legally prohibited, delete all such Customer Data in PerfectMIND systems or otherwise in PerfectMIND's possession or under PerfectMIND's control.

7.6 Survival. Without limiting the applicability of other terms and conditions of this Agreement, the terms of this Agreement that, by their nature, are intended to survive any purported or actual termination or expiry of this Agreement will so survive, including Part 1, Part 3, Part 6, Part 7, Part 8, Part 9 (except for §9.1) and Part 10.

PART 8—CONFIDENTIALITY

8.1 Confidential Information. Neither party will, without the prior written approval of the other party, disclose or use for any purpose other than exercise of its rights or performance of its obligations under this Agreement any information, documents, know-how, trade secrets of the other party, including the terms of this Agreement and such other information that is not in the public domain including, in respect of the Customer Data and, in respect of the Platform (collectively, "**Confidential Information**") that may come to its knowledge or possession by reason of exchange of information under this Agreement or entering into this Agreement.

8.2 Obligation to Protect. Each party will protect the other's Confidential Information using the same standard of care that it would use to protect its own, similar information, but in any case no less than a reasonable standard of care for information of similar sensitivity.

8.3 Title. All right, title and interest (including all Intellectual Property Rights) in and to each party's Confidential Information will be and remain vested in such party.

8.4 Permitted Disclosures. Each party will not disclose Confidential Information of the other party to any person except to the first party's employees, agents and sub-contractors on a strictly "need-to-know" basis, and provided that such persons have are subject to confidentiality obligations equivalent to the obligations imposed hereunder. Notwithstanding such disclosures, each party will be fully responsible for any breaches of confidentiality caused by such persons to whom the Confidential Information is disclosed as if such breach were committed by such party.

8.5 Exceptions. Neither party will have an obligation with respect to Confidential Information where such party can establish, through documentary evidence, that such information (a) was previously known to it free of any obligation to keep it confidential, (b) is or becomes publicly available other than by unauthorized disclosure, (c) is legally disclosed by third parties

without restrictions of confidentiality, or (d) has been independently developed by it without reference to the other party's Confidential Information.

8.6 Governmental Disclosures. Notwithstanding anything else in this Agreement, if a party is required to disclose any Confidential Information to a government body or court of law or as otherwise required by law, it may do so provided that it gives the other party sufficient advance notice as reasonable in the circumstances subject to applicable law to enable the owner of such Confidential Information the opportunity to contest the disclosure or obtain a protective order and assists the owner of such Confidential Information in contesting or protecting same.

PART 9—WARRANTIES, DISCLAIMERS, INDEMNITIES AND LIABILITY

9.1 PerfectMIND Warranties. PerfectMIND represents and warrants to Customer that (a) the Platform will perform materially in accordance with the documentation therefor under normal use and circumstances; (b) the Professional Services will be performed in a diligent and workmanlike manner consistent with standards generally observed in the industry for similar services, and the Work Product will materially conform to the Statement of Work upon acceptance, and PerfectMIND will use all commercially reasonable efforts to remedy any material non-conformance of the Work Product to the Statement of Work in an expeditious manner; and (c) the functionality of the Platform will not be materially decreased during the Term, subject to the other provisions of this Agreement. For clarity, PerfectMIND will not be responsible for and the warranties provided by PerfectMIND in this §9.1 do not apply to situations where improper or inadequate installation or maintenance of software or hardware that Customer uses to access or utilize, or otherwise in connection with, the Platform or Customer Data, or failure to properly configure the Platform for use in connection with such hardware or software is the cause of a failure or malfunction.

9.2 Mutual Warranty. Each party represents and warrants that it has the legal power and authority to enter into this Agreement and to fully abide by the terms and conditions hereof.

9.3 Indemnification. To the fullest extent permitted by law, Consultant shall, at its own expense, indemnify, protect, defend (by counsel reasonably satisfactory to the City) and hold harmless City and any and all of its officers, officials, employees, agents and volunteers ("Indemnified Parties") from and against any and all liability (including liability for claims, demands, damages, obligations, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs and expert witness fees) of any nature ("Liability"), whether actual, alleged or threatened, which arise out of, pertain to, or relate to the negligent performance or failure to comply with this Agreement, regardless of any fault or alleged fault of the Indemnified Parties. For design professionals (as that term is defined by statute) acting within the scope of their professional capacity, to the fullest extent permitted by law, Consultant shall, at its own expense, indemnify, protect, defend (by counsel reasonably satisfactory to the City) and hold harmless any Indemnified Parties from and against any and all Liability, whether actual, alleged or threatened, which arise out of, pertain to,

or relate to the negligence, recklessness, or willful misconduct of the Consultant, or as may be provided by statute in Civil Code § 2782.8, as may be amended from time to time. The only exception to Consultant's responsibility to indemnify, protect, defend, and hold harmless the Indemnified Parties from Liability is due to the active negligence or willful misconduct of City or its elective or appointive boards, officers, agents and employees.

9.4 Scope of Obligation. Consultant's duty to indemnify, protect, defend and hold harmless as set forth in this Section shall include the duty to defend (by counsel reasonably satisfactory to the City) as set forth in California Civil Code § 2778. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Consultant under worker's compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Consultant and shall continue to bind the parties after termination/completion of this agreement. This indemnification shall be regardless of and not in any way limited by the insurance requirements of this contract. This indemnification is for the full period of time allowed by law and shall survive the termination of this agreement. Consultant waives any and all rights to express or implied indemnity against the Indemnified Parties concerning any Liability of the Consultant arising out of or in connection with the negligent performance of this Agreement or Consultant's failure to comply with any of the terms of this Agreement. Consultant's duty to indemnify, protect, defend and hold harmless as set forth in this Section shall not be excused because of the Consultant's inability to evaluate Liability, or because the Consultant evaluates Liability and determines that the Consultant is not or may not be liable. The Consultant must respond within thirty (30) calendar days to any tender by the City, unless the time for responding has been extended by an authorized representative of the City in writing. If the Consultant fails to timely accept such tender, in addition to any other remedies authorized by law, as much of the money due or that may become due to the Consultant under this Agreement as shall reasonably be considered necessary by the City may be retained by the City until disposition has been made of the matter subject to tender, or until the Consultant accepts the tender, whichever occurs first. Consultant agrees to fully reimburse all costs, including but not limited to attorney's fees and costs and fees of litigation incurred by the City in responding to matters prior to Consultant's acceptance of the tender.

9.5 EXCLUSION AND LIMIT OF LIABILITY. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER AND HOWEVER CAUSED, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, INCLUDING (WITHOUT LIMITATION) LOSS OF PRODUCTION, LOSS OF OR CORRUPTION TO DATA, LOSS OF PROFITS OR OF CONTRACTS, LOSS OF BUSINESS, LOSS OF MANAGEMENT OR OPERATION TIME AND LOSS OF GOODWILL OR ANTICIPATED SAVINGS, EVEN IF THE PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY THEREOF OR COULD HAVE FORESEEN SUCH CLAIMS. THE ENTIRE LIABILITY OF EACH PARTY TO THE OTHER PARTY FOR DIRECT DAMAGES FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION OR THE CAUSE OF ACTION, WHETHER IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF A FUNDAMENTAL TERM, FUNDAMENTAL BREACH OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT

WILL BE LIMITED TO THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500).

PART 10—GENERAL

10.1 Internal Escalation of Disputes. Any controversy, claim or dispute (“**Dispute**”) arising out of or related to this Agreement, including, without limitation, Disputes covering the performance of the parties’ obligations or the interpretation of the terms and conditions of this Agreement or applicable fees or payments, shall be dealt with as follows: Each Dispute initially shall be brought for resolution before a committee consisting of two (2) representatives of each of the parties- the project manager and the Account Manager from PerfectMIND and the project manager and a person with a position equivalent to Account manager from Customer. If the committee is unable to resolve a Dispute within ten (10) working days, then the Dispute shall be escalated to a separate committee consisting of one (1) officer of each party – the Director of Customer Service from PerfectMIND and an officer of equivalent position from Customer. If this second committee is unable to resolve the Dispute within ten (10) working days, then the Dispute shall be escalated to another separate committee consisting of two (2) executive officers of each party – the CEO and the COO of PerfectMIND and two executive officers with equivalent positions with Customer. Members of each committee shall act reasonably and good faith and attempt to resolve the dispute amicably.

10.2 Arbitration. If the committee of executive officers is unable to resolve the Dispute within fifteen (15) working days then either party may refer the Dispute to formal arbitration in accordance with the *Commercial Arbitration Act* (British Columbia), and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Either party may refer a Dispute to arbitration by serving written notice of its intention to arbitrate. Arbitration of the Dispute shall be conducted by a single arbitrator to be mutually agreed to by the parties within five (5) working days following the referral of the Dispute to arbitration. The arbitrator shall have substantial experience in arbitrating business disputes involving information technology matters, including contractual disputes. If the parties are unable to mutually agree upon an arbitrator, either party may apply to a court of competent jurisdiction for the appointment of such arbitrator. Each of the parties agrees to co-operate promptly and fully with the other party with respect to all aspects of arbitration including, without limitation, appointment of the arbitrator and compliance with any requests or orders of the arbitrator. All arbitration shall take place in Vancouver, British Columbia, Canada. All arbitration shall be conducted in the English language. Each party shall pay an equal share of the costs of any arbitration. Any award of the arbitrator shall be final and binding on the parties. .

10.3 Marketing. PerfectMIND may use Customer’s name, with an accurate reference to Customer’s use of the Platform, in PerfectMIND’s marketing materials or on PerfectMIND’s website, with a link to Customer’s website.

10.4 Notice. Any notice required or permitted to be given hereunder will be in writing and may be given by personal services, including by courier, or by facsimile if confirmed on the same day, or in writing by registered airmail, with postage prepaid to the following:

If to PerfectMIND:
PerfectMIND Inc.
2nd Floor, 4333 Still Creek Drive
Burnaby, BC, V5C 6S6
Fax:

Attention: Farid Dordar-CEO or Ali Sanei-COO

If to Customer:
City of Calistoga
1232 Washington St.
Calistoga, CA 94515
United States

Attention: Rachel Melick

Any notice given by personal delivery (including courier) will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by facsimile, on the day of transmittal thereof if given during the normal business hours of the recipient on a business day, and on the business day during which such normal business hours next occur if not given during such hours.

10.5 Assignments. This Agreement may not be assigned by either party without the prior written approval of the other party, such approval not to be unreasonably withheld or delayed, but may be assigned by PerfectMIND to (i) a parent, subsidiary or affiliate; (ii) an acquirer of assets; or (iii) a successor by merger, on written notice to Customer. Any purported assignment in violation of this section shall be void.

10.6 Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein, without reference to conflict of laws principles, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Platform shall be subject to the jurisdiction of the courts of British Columbia, Canada, to which the parties hereby irrevocably attorn.

10.7 Force Majeure. Neither party shall be liable for damages for any delay or failure of delivery arising out of an event of Force Majeure.

10.8 Waivers. No right under this Agreement will be deemed to be waived except by notice in writing signed by the party waiving its right, and any such waiver will not prejudice its rights in respect of any subsequent breach of this Agreement by the other party. Any failure by a party to enforce any clause of this Agreement or right contained in it, or any forbearance, delay or indulgence granted by a party to the other party, will not be construed as a waiver of the first-mentioned party's rights under this Agreement.

10.9 No Presumption. No presumption shall operate in favour of or against any party hereto as a result of any responsibility that any party may have had for drafting this Agreement.

10.10 Enurement. This Agreement will enure to the benefit of and be binding upon the parties and their successors, trustees, permitted assigns and receivers.

10.11 Injunctive Relief. Each party acknowledges and agrees that a breach by it of the provisions of this Agreement relating to Confidential Information, Intellectual Property Rights, or restrictive obligations may result in immediate and irreparable harm to the other party for which compensation would be an inadequate remedy. Accordingly, each party acknowledges and agrees that the other party may seek, as a matter of right and without the necessity of establishing the inadequacy of monetary damages, injunctive or other equitable relief to prevent or remedy such conduct from any court of appropriate jurisdiction.

10.12 Entire Agreement. This Agreement together with any applicable Statement of Work constitutes the entire Agreement between the parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing. In connection therewith, no terms or conditions stated in any Customer purchase order or other order or documentation will be incorporated into or form any part of this Agreement, and all such terms or conditions will be null and void, notwithstanding any provision therein.

10.13 Amendments. This Agreement may not be amended except by written instrument signed by an authorized representative of both parties.

10.14 Severability. If any term or provision of this Agreement will be found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same will not affect the other terms or provisions hereof or the whole of this Agreement, but such terms or provisions will be deemed modified to the extent necessary in the court's opinion to render such terms or provisions enforceable, and the rights and obligations of the parties will be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

10.15 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

10.16 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

10.17 Counterparts. This Agreement may be signed in as many counterparts as may be necessary, each of which so signed will be deemed to be an original and each copy sent by electronic facsimile transmissions will be deemed to be an original, and such counterparts together will constitute one and the same instrument and notwithstanding the date or dates of execution will be deemed to bear the date as first above written.

PART 11 INSURANCE

Work shall not commence until all insurance requirements listed below have been met and certificates have been approved by Customer. Proof of insurance shall be provided to City of Calistoga, prior to the start of work. All required insurance must be issued by companies or

financial institutions that are financially rated A or better and duly licensed, admitted and authorized to do business in the State of California.

11.1 Commercial General Liability. PerfectMIND shall maintain, and specifically agrees that it will maintain, throughout the term of this Agreement, liability insurance, in which the City of Calistoga shall be named an additional insured in the minimum amount of \$500,000. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless Customer; and if Customer becomes liable for an amount in excess of the insurance limits herein provided, PerfectMIND covenants and agrees to indemnify and save and hold harmless Customer from and for all such losses, claims, actions, or judgments for damages or liability to persons or property. PerfectMIND shall provide Customer with a Certificate of Insurance, or other proof of insurance evidencing compliance with the requirements of this paragraph. In the event the insurance minimums are changed, PerfectMIND shall immediately submit proof of compliance with the changed limits.

11.2 Automobile. PerfectMIND shall maintain automobile insurance with a limit of no less than \$500,000 per occurrence for owned, non-owned and hired vehicles. If PerfectMIND has no owned motor vehicles, then hired and non-owned motor vehicle liability coverage with limits not less than \$500,000 per accident for bodily injury and property damage is required. Where applicable, the City of Calistoga shall be named as an additional insured.

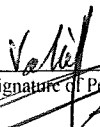
11.3 Workers' Compensation. PerfectMIND will provide Customer a certificate demonstrating its compliance with the requirements and restrictions of British Columbia's statutory workers' compensation regime.

11.4 Technology Errors and Omissions. PerfectMIND shall have and maintain coverage for negligent acts, errors or omissions with a liability limit of \$5,000,000 per claim/annual aggregate.

11.5 Cyber Risk. PerfectMIND shall have and maintain the following coverages with a liability limit of \$5,000,000 per event/annual aggregate: information or identity theft, liability for misuse or disclosure of third party data, liability for loss of data, outages or spread of viruses, attacks, and/or destruction or disclosure of data or electronic information.

IN WITNESS WHEREOF the parties have executed this Agreement with effect as of the date first above written.

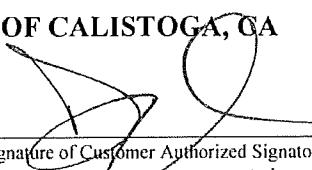
PERFECTMIND INC.

Per: 
(Signature of PerfectMIND Authorized Signatory)

Name: Valid shabab
(Please Print PerfectMIND Signatory's Name)

Title: VP, sales & Marketing
(Please Print PerfectMIND Signatory's Title)

CITY OF CALISTOGA, CA

Per: 
(Signature of Customer Authorized Signatory)

Name: Dylan Ferk
(Please Print Customer Signatory's Name)

Title: City Manager
(Please Print Customer Signatory's Title)

EXHIBIT A
Platform Use fees

PLATFORM

The fees for the Platform use will be as follows:

Year One (from MAR. 2, 2018 to MAR. 1, 2019): \$6,000.00

Year Two (from MAR. 2, 2019 to MAR. 1, 2020): \$6,000.00

Year Three (from MAR. 2, 2020 to MAR. 1, 2021): \$6,000.00

Year Four (from MAR. 2, 2021 to MAR. 1, 2022): \$6,000.00

Year Five (from MAR. 2, 2022 to MAR. 1, 2023): \$6,000.00

EXHIBIT B

Statement of Work

Scope/Project Management and Planning

PerfectMIND will be responsible for planning and managing the project, using best practices generally recognized as good project management methodology, and designating a Project Manager for the project, who will be responsible for:

- Adherence to the project scope and schedule
- Management of work activities including system design and installation, system configuration, data conversion, testing and quality assurance, administrator and end-user training, and go-live support
- Coordination of resources, work sessions, and training
- Communications
- Managing project issues and issue tracking
- Status reports
- Available for status calls to provide updates
- Working with the designated Customer project manager
- Deliverable acceptance and sign-off

The frequency and other details of status reports will be agreed upon during the discovery phase. In addition to the Project Manager, PerfectMIND will assign appropriate staff to complete the deliverables described in this Statement of Work, including at minimum: system installation, software configuration, data conversion, testing, administration and end-user training and go-live support.

Timeline

Customer is planning to implement the solution with the following estimated timeline. PerfectMIND is expected to recommend an overall implementation plan and timeline based on their experience with implementations of similar scope and complexity.

MAR. 2, 2018	Contract Signature
TBD	Project kick off
TBD	Project Initiation
TBD	Software Configuration and Reports
TBD	User Acceptance Testing
TBD	Data Conversion
TBD	Training and Documentation
TBD	Go-live

Technical Requirements

PerfectMIND will provide a SaaS solution. The only requirement for operating and using the proposed solution will be broadband internet connection and access to the internet via a web browser with all standard browsers being supported (recommended browsers will be communicated to Customer during the implementation phase).

Customer Testing

PerfectMIND will develop a test plan for Customer that covers system and functional, testing. After all of the components of the system have been completed, Customer will conduct system and functional testing. Customer will report any defects to PerfectMIND immediately for correction. If any defects are found, PerfectMIND will provide a plan to achieve acceptance or to make corrections or replacements.

Training

PerfectMIND will provide full training to system administrators and trainers (number of system administrator and trainers to be determined at the discretion of Customer). PerfectMIND will develop a training plan for Customer to fully prepare the system administrators to support the system. The training plan will include:

- In-depth understanding of the system functionalities, including:
 - Security Settings
 - Workflow Development
 - Report Development
 - Software Configuration
- A review of best practices in the configuration and use of the system.
- Training sessions on different modules of the system, including:
 - Contact/Account Management
 - Store/Point of Sale Training
 - Membership Management
 - Attendance Tracking
 - Billing Management
 - Activity/Program Registration
 - Facility Rental
 - Appointments and Private Lesson scheduling
 - Marketing
 - Staff Management
 - Accounting
 - Document Template creation and configuration
- Troubleshooting

PerfectMIND will provide technical assistance to Customer's IT staff on the operation of the system. PerfectMIND will investigate and troubleshoot any technical issues with the system that Customer's IT staff report to PerfectMIND.

Post-live Support

PerfectMIND will provide full application support during the week of go-live. PerfectMIND's project team will be available to provide go-live and post go-live support. The resource(s) will be accessible by phone and email to the system administrators.

Future Services

The ability to provide the services/products in this section may be required in the future. Customer may request to add similar services or products in the future, including but not limited to:

- New features or;
- Features that were identified as Custom
- Additional Reports

and such similar services and products will be provided by PerfectMIND upon PerfectMIND and Customer negotiating and entering into Statements of Work providing for same.

Deliverables and Service Acceptance

Customer designee will formalize the acceptance of the service via written acceptance of the following acceptance forms:

Acceptance Form A- Project Kickoff (Milestone 1)

Purpose

The purpose of the Project Kickoff Acceptance Form is to confirm that the project kickoff has occurred and the following deliverables are completed.

Deliverables

- Contract signature and execution
- Planning of the project kickoff/discovery session
- Resourcing and scheduling for the discovery phase
- Preliminary review of the requirements by the project team prior to the first meeting
- Creation of live production environment, which includes at a minimum:
 - Setup of Customer's production environment on the cloud
 - System setups including backups and retentions
 - Database security setup
 - Setup of the monitoring tools and systems on Customer's database
 - Basic configuration of the database with Parks and Rec Modules

The work was completed on _____ and accepted by Customer.

Accepted by:

(City of Calistoga): _____ Date: _____

Title: _____

(PerfectMIND): _____ Date: _____

Title: _____

Acceptance Form B - Project Initiation (Milestone 2)

Purpose

The purpose of the Project Initiation Acceptance Form is to confirm that the project initiation is complete.

Deliverables

- Discovery phase, which will inform the detailed work breakdown structure and includes:
 - Existing database system discovery
 - Business process review and gap analysis
 - Activity registration overview
 - Facility configuration overview
 - Membership management overview
 - Store and point of sale overview
 - Marketing overview
 - Accounting overview

The Discovery phase may involve multiple meetings and communications to clarify and assist PerfectMIND in understanding the above areas further.

- Project work breakdown structure includes:
 - Tasks and durations
 - Scheduling
 - Resourcing and assignments
 - Dependencies
- Initiation of tasks listed under “Scope/Project Management and Planning” above, which includes:
 - Communications requirement
 - Project reporting requirements including the frequency and details of the status reports
 - Issue list/tracker requirements

The work was completed on _____ and accepted by Customer.

Accepted by:

(City of Calistoga): _____ Date: _____

Title: _____

(PerfectMIND): _____ Date: _____

Title: _____

Acceptance Form C – Software Configuration and Reports (Milestone 3)

Purpose

The purpose of the Software Configuration and Reports Acceptance Form is to confirm that the software and reports configuration is complete.

Deliverables

- Application configuration and setup
- Security and roles configuration
- Setup workflows and business rules
- Set-up client specific database
- Configuration of Email functionality

The work was completed on _____ and accepted by Customer.

Accepted by:

(City of Calistoga): _____ Date: _____

Title: _____

(PerfectMIND): _____ Date: _____

Title: _____

Acceptance Form D – Data Conversion (Milestone 4)

Purpose

The purpose of the Data Conversion Acceptance Form is to confirm that the data converted is complete and Accepted by Customer.

Deliverables

The data conversion is completed and Accepted by Customer.

Acceptance Criteria:

PerfectMIND has provided a detailed Data Conversion Plan that, at a minimum includes:

- Description of PerfectMIND's data conversion methodology and tools
- Identification of data sources
- Method of supplying data
- Conversion schedule, including on-site and webinar reviews and planned iterations test conversions
- Roles and responsibilities, resources required
- Testing process
- Issue reporting process
- Documentation to be used for field mapping from legacy data sources to the system's database
- Documentation to be used for data transformations from legacy data code tables to system's database code tables
- Options for treatment of exceptions
- Final data conversion timetable that includes the minimum number of data conversion iterations

The work was completed on _____ and accepted by Customer.

Accepted by:

(City of Calistoga): _____

Date: _____

Title: _____

(PerfectMIND): _____

Date: _____

Title: _____

Acceptance Form E – Training (Milestone 5)

Purpose

The purpose of the Training Acceptance Form is to confirm that the training is complete.

Deliverables

The training plan is complete and specifies the training schedule and curriculum for the recipients of system administrator training and end-user training.

Customer will confirm the following:

- System administrators have been trained on all aspects of system configuration, individual and role-based security profiles, enterprise silo security settings and configurations, document template creation, and report queries and changes.
- System administrators are able to complete new configuration items with minimal assistance from PerfectMIND.
- End users have been trained on all aspects of the system and can complete tasks within the system.
- Training materials and online learning center access have been delivered.

The work was completed on _____ and accepted by Customer.

Accepted by:

(City of Calistoga): _____ Date: _____

Title: _____

(PerfectMIND): _____ Date: _____

Title: _____

Acceptance Form F – User Acceptance Testing (Milestone 6)

Purpose

The purpose of the User Acceptance Testing Form is to confirm that the system testing is complete and the system is functional.

Deliverables

The test plan including test scripts, schedule, roles and responsibilities, and definitions of passed/failed test is provided to Customer and Customer is coached through the testing phase. Customer will conduct a complete test on the system to ensure the following is tested and passed:

- System functions
- Work flows and business rules
- Reports

The work was completed on _____ and accepted by Customer.

Accepted by:

(City of Calistoga): _____ Date: _____

Title: _____

(PerfectMIND): _____ Date: _____

Title: _____

Acceptance Form G - Go-Live (Milestone 7)

Purpose

The purpose of the Final Acceptance Form is to confirm that the system is operational.

Deliverables

The final data conversion has been completed and the system is pushed to the Production environment.

The work was completed on _____ and accepted by Customer.

Accepted by:

(City of Calistoga): _____ Date: _____

Title: _____

(PerfectMIND): _____ Date: _____

Title: _____

Fee Payment Schedule

Schedule Target Dates	Milestones & Deliverable	Subscription	Implementation	Payment Date
MARCH 2, 2018	Upon signing of the agreement <ul style="list-style-type: none"> Contract Signature and Execution Payments due: 	\$6,000.00	\$7,500.00	Upon signing of the Agreement
TBD	Project Kick off (Milestone 1) <ul style="list-style-type: none"> Planning of the project kick off/discovery session Resourcing and Scheduling for the discovery phase Preliminary review of the requirements by the project team prior to the first meeting Creation of the live production environment 			Upon completion of Acceptance Form A
TBD	Project Initiation (Milestone 2) <ul style="list-style-type: none"> Discovery phase Project work breakdown structure Initiation of tasks listed under "Scope/Project Management and Planning" 			Upon completion of Acceptance Form B
TBD	Software Configuration and Reports (Milestone 3) <ul style="list-style-type: none"> Application configuration and setup Security and roles configuration Setup workflows and business rules Configuration and creations of the reports 			Upon completion of Acceptance Form C

TBD	Data Conversion Acceptance Testing (Milestone 4) <ul style="list-style-type: none"> Data Conversion 			Upon completion of Acceptance Form D
TBD	Training (Milestone 5) <ul style="list-style-type: none"> System administrators have been trained on all aspects of system configuration, individual and role-based security profiles, enterprise silo security settings and configurations, document template creation, and report queries and changes. System administrators are able to complete new configuration items with minimal assistance from PerfectMIND. End users have been trained on all aspects of the system and can complete tasks within the system. Training materials and online learning center access have been delivered 			Upon completion of Acceptance Form E
TBD	User Acceptance Testing (Milestone 6) <ul style="list-style-type: none"> System functions Work flows and business rules Reports 			Upon completion of Acceptance Form F
TBD	Go-live (Milestone 7) The system is pushed to the Production environment.			Upon completion of Acceptance Form G
Total		\$13,500.00		

The above fees do not include any travel, living or any other out-of-pocket expenses incurred by PerfectMIND in providing on-site Professional Services. Customer will pay PerfectMIND a flat rate of \$550 per day per PerfectMIND employee or subcontractor who provides on-site Professional Services to Customer to cover accommodation, meal, local transportation and other out-of-pocket expenses, except travel (airfare) expenses. Customer will reimburse PerfectMIND for all reasonable travel (airfare) expenses incurred by PerfectMIND's to send its employees and subcontractors to Customer's site. All such travel (airfare) expenses for which PerfectMIND seeks reimbursement will be supported by documentation in a form reasonably acceptable to the Customer.

EXHIBIT C
PerfectMIND Rate for Professional Services

Optional Services	Unit Price	Description
Importation of Data	\$150/hr	Upon termination of this Agreement, PerfectMind shall supply to Customer a basic export of the complete data in a format suitable for importation. Anything beyond will be charged at this rate.
Professional Services	\$150/hr	Services outside the agreed to Statement of Work that requires additional resourcing to accommodate Customer's requests (other than development/programming).
Integration to third party software	\$250/hr	Processing Integration with the Customer's preferred payment processor.
Training	\$150/hr	Any future additional training requested outside the Statement of Work.
Development	\$250/hr	Services outside the agreed to Statement of Work that requires additional development (programming).

The above fees do not include any travel, living or any other out-of-pocket expenses incurred by PerfectMIND in providing Professional Services. Customer will reimburse PerfectMIND for all reasonable travel, living and other out-of-pocket expenses incurred by PerfectMIND's employees and permitted subcontractors in providing the Professional Services. All such expenses for which PerfectMIND seeks reimbursement will be supported by documentation in a form reasonably acceptable to Customer.

EXHIBIT D

Service Levels

1. Platform Uptime.

The Platform will achieve a system uptime performance level of 99.9% during the Operation Hours on an annual basis inclusive of any downtime caused by the underlying telecommunication services provider. In this Exhibit, "Operation Hours" means 6 am to midnight Pacific Time, seven days a week.

PerfectMind will only be responsible for its Platform uptime performance levels and will not be responsible for any failure due to a failure of Customer's system(s) or a Force Majeure event as described in this Agreement, and such failures shall not be counted against PerfectMind's required system uptime performance levels.

PerfectMind may, upon not less than seven (7) days' prior written notice to Customer, which may be email notification, cause the Platform to be unavailable for a period of time not to exceed 12 consecutive hours ("Planned Maintenance"). Planned Maintenance will be performed during the Maintenance Window, and not more than once per week, unless any such Planned Maintenance is a result of urgent events outside of PerfectMind's direct control in which case PerfectMind will provide as much notice as is practicable. Planned Maintenance will apply against PerfectMind's required uptime performance level unless (i) it is conducted during the Maintenance Window; or (ii) it is as result of remedial work necessary to address a material defect with third party software such as Microsoft® operating system or SQL server. In this Exhibit D, "Maintenance Window" means between 12:01 am and 6:00 am Pacific Time on any day.

2. Technical Support.

Following the reporting of a problem by Customer's technical support personnel either via phone call or email PerfectMind's technical support, PerfectMind will respond to the problem in accordance with the incident level and provide a fix to the problem all in accordance with the table set forth below:

24x7x365 Technical Support		
Description	Response time	Resolution Time
Customer report an incident via phone, email, or chat	A live agent will immediately discuss the issue with Customer	85% of the incidents are currently addressed on the first call
The initial call requires escalation to Level II	The initial call will be transferred to a Sr. live agent to further discuss the incident with the customer	95% of the escalated calls to level II are addressed within the first call
The escalated call to Level II requires escalation to the Development team	Level II agent create a case for the development team to further investigate the incident	Resolution time will follow the SLA table below

Service Level Agreement		
Incident Level	Description	Resolution Time
Critical	<p>This incident level is attained when the following conditions are met:</p> <ul style="list-style-type: none"> - Complete inability to use the Platform; or - A reoccurring temporary inability to use the Platform 	Within the <u>same business day</u>
High	<p>This incident level is attained when the following conditions are met:</p> <ul style="list-style-type: none"> - A significant degradation of the significant features or functions available on the Platform - Recent modifications to the Platform cause some significant features or functions to operate inconsistently 	Within <u>24 hours</u>
Low	<p>This incident level is attained when the following conditions are met:</p> <ul style="list-style-type: none"> - A minor degradation of some significant features or functions; or a degradation of some secondary features or function occurs 	These issues will be reviewed and prioritized according to the severity of the issue. An accurate estimate will be provided to the customer within a week after the incident is reported

EXHIBIT E

Platform Features and Functionalities

PerfectMind's Platform will include the following features and functionalities:

- **Built-In Reporting Engine**
A built-in reporting engine to help the customer to create reports.
- **Integrated Workflow Engine**
Generate workflows to streamline your team's processes and communications
- **Business App Store**
PerfectMind is adaptable through our community-driven App Store.
- **Open API**
Having access to an adaptable integration with external apps allows fluid interconnectivity and collaboration across platforms
- **Data Security, Auditing and Permissions**
The ability to control app-level access, user auditing, user time limits, specific IP access, as well as group- and role-based data permissions.
- **Multi-Site Management & Reporting**
To allow client to manage multiple sites from one account.
- **24/7 Customer Service**
PerfectMind provides 24x7 operation support using live agents/chat/email.

Recreation Management Features:

- **Facility booking and Scheduling**
PerfectMind booking takes care of conflict and contract management, recurring bookings, equipment and rental inventory, capacity management and more. Your staff and your members can schedule events online or on-site. PerfectMind lets you manage facility dependencies, availability, and multiple rates. Customers can book using desktop, tablet or mobile devices on all popular web browsers.
- **Membership Management**
This allows you to manage families, multiple memberships, and related contacts.
- **Document Management**
You can create, save, print, upload and manage your documents for your organization in the cloud. Sign waivers, contracts, and other documents electronically with a digital signature and store them safely in the cloud.
- **Staff Management**
You can view all your staff schedules in one master calendar. PerfectMind provides your staff with the ability to make their own schedule and to adjust availability for vacations and time off. Manage staff wages, commissions, hours, availability and much more. Restrict access permissions for users and groups to improve security.
- **Activity Registration**
Online or on-site registration for all types of bookings including courses, private lessons, drop-in and flexible registrations to accommodate your needs. Intelligent conflict management gives you the flexibility to readily make changes to events.

- **POS and Inventory Management**
To sell products, service or event online or on-site using cutting-edge features within inventory and sales management. Track purchase orders and inventory.
- **Attendance Tracking and Check-in**
Allow customers to scan or check themselves in at the front desk using a kiosk, or manually check-in with a staff member. Improve retention with live class statistics, and much more. Guest check-ins allow for quick processing to non-members or during busy periods.
- **Calendar**
Flexible, multi-functional calendar with drag-and-drop functionality to make changes and updates to events, activities and facility booking. You can also view multiple facilities, locations and courses.
- **Marketing**
A built-in, fully-functional email solution replaces the need for any additional email applications so you can streamline your marketing for programs, campaigns, and personalized operation emails. Increase signups and enrollments using loyalty and referral programs. You can also have access to simple and customizable landing pages and lead-capture forms.
- **Task Management**
To schedule automated and recurring tasks with alerts to stay up-to-date, organized and focused. Set reminders based on predefined or custom triggers
- **Reports**
PerfectMind's built-in reporting engine enables you to create, customize and run reports. Create and schedule custom financial, attendance, utilization, and marketing reports all from the same interface. View real-time analytics and historical data in tabular or graphical format. All reports can be exported for use in a third-party application.
- **Account management**
To keep track of your clients and contacts including organizations and families

PROFESSIONAL SERVICES AGREEMENT
Fair Housing Napa Valley
for Fair Housing Support Services during FY 2017-2018

Authorizing Agreement No. 763

THIS AGREEMENT is entered into as of this 12th day of March, 2018, by and between the CITY OF CALISTOGA herein called the "City", and FAIR HOUSING NAPA VALLEY, herein called the "Consultant".

Recitals

WHEREAS, City desires to obtain fair housing support services; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by reference.

2. Time of Performance. The services of Consultant shall be provided between July 1, 2017 and June 30, 2018. Any changes to these dates shall be approved in writing by the City Manager or his or her designee.

3. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall in no event exceed twelve thousand dollars (\$12,000). Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

B. Timing of Payment. Billing for said services may be made on an annual basis. City shall review Consultant's statement and pay Consultant for services rendered within 30 days of receipt of the Consultant's statement.

C. Changes in Compensation. Consultant will not undertake any work for which the City is obligated to pay that will incur costs in excess of the amount of twelve thousand dollars (\$12,000) during the term of this Agreement.

D. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's report. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will

compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates.

4. Interest of Consultant.

A. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

5. Interest of Members and Employees of City. No member of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his/her personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.

6. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

7. Indemnification of City. Consultant hereby agrees to defend, indemnify and save harmless the City, its officers, agents, employees and servants, from and against any and all claims, liability or obligations based on negligence or willful misconduct brought on account of or arising out of any acts, errors or omissions of Consultant undertaken pursuant to this Agreement. The City has no liability or responsibility for any accident, loss or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Consultant Not an Agent of City. City retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this

Agreement. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

9. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

10. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City of Calistoga business license.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of this Agreement.

C. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7.

D. City Not Responsible. The City is not responsible or liable for Consultant's failure to comply with any and all of said requirements.

11. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by City, or as required by law.

12. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of the contract, a General Liability insurance policy insuring him/her and his/her firm to an amount not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage.

(2) Consultant agrees to have and maintain for the duration of the contract an Automobile Liability insurance policy insuring him/her and his/her staff to an amount not less than Five Hundred Thousand Dollars (\$500,000) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than One Million Dollars (\$1,000,000) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide coverage for One Million Dollars (\$1,000,000) Employers' Liability (Coverage B).

(c) Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officials, officers, employees, volunteers, and agents.

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its employees, officers, agents and contractors are hereby added as additional insureds, but only as respects work done by, for on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to the City all certificates of insurance with original endorsements affecting coverage required by this paragraph. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

B. General Liability.

(1) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

(2) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. All Coverages. Each insurance policy required in this item shall provide that coverage shall not be canceled, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the City. Current certification of such insurance shall be kept on file with the City Secretary at all times during the term of this Agreement.

D. Acceptability of Insurers. Insurance is to be placed with insurers approved by the California Department of Insurance with a Best/Es rating of no less than A:VII.

E. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

13. Assignment Prohibited. Neither the City nor Consultant may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

14. Termination of Agreement.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon written notice to the Consultant upon 90 days' written notice. Consultant may terminate this Agreement upon 90 days' written notice.

B. If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

C. Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the City, become its sole property and shall, at Consultant's expense, be delivered to the City or to any party it may so designate.

D. In the event termination is without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that Consultant shall be entitled to compensation for work in progress at the time of termination.

15. Amendment. This Agreement constitutes the complete and exclusive statement of the Agreement to City and Consultant. It may be amended or extended from time to time by written agreement of the parties hereto.

16. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

If to City: City of Calistoga
City Manager
1232 Washington Street
Calistoga, CA 94515

If to Consultant: Fair Housing Napa Valley
Pablo Zatarain, Executive Director
1804 Soscol Avenue, Suite 203
Napa, CA 94559

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

20. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual

orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

21. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

22. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

23. News Releases/Interviews: All Consultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

24. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: _____

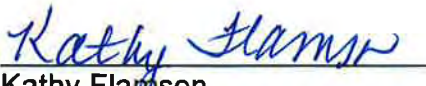

Dylan Feik
City Manager

CONSULTANT

By: _____


Pablo Zatarain
Executive Director
Fair Housing Napa Valley

ATTEST


Kathy Flannison
City Clerk

Fair Housing Napa Valley

2017-18 Scope of Work- City of Calistoga

Fair Housing Napa Valley (FHNV) agrees to provide the following services to the City of Calistoga (City) for a lump sum fee of \$12,000 during the 2017-18 Fiscal Year beginning on July 1, 2017 and ending on June 30, 2018:

Fair Housing Program

Fair Housing Napa Valley (FHNV) will provide a Fair Housing Program to educate and offer services to the City of Calistoga (City) in relation to the Federal Fair Housing Act of 1968, as well as State of California protections for persons regarding housing discrimination. Each complaint will be thoroughly investigated and referred to the appropriate agency for administrative or legal filing, when applicable. Any cases filed as a result of discrimination will be reported to the City in the form of a press release once a final resolution has been reached. Referral options will be discussed with clients when applicable, to determine the appropriate venue for their case. All fair housing complaints will be filed through the US Department of Housing and Urban Development (HUD), the California Department of Fair Employment and Housing (DFEH), or a private attorney in Federal Court. In addition, FHNV will conduct fair housing testing regarding complaints, where appropriate, and will offer related trainings in the City.

FHNV will deliver these services through community outreach and education, distribution of information, counseling, advocacy, and enforcement of federal and state anti-discrimination laws. These services, including education and outreach, will be provided in English and in Spanish through on-site bilingual staff. Clients in need of translated services in other languages will be accommodated through use of the Language Line, a third-party phone service.

General Housing Counseling Services- Landlord/ Tenant

FHNV shall respond to all inquiries for general housing counseling from tenants and landlords within the City, regarding their rights and responsibilities including but not limited to the following areas: termination of tenancy, evictions, habitability, repairs/ maintenance, abandonment, nuisances, and other general housing complaints. In addition, FHNV will utilize the mediation process to assist tenants and landlords in resolving existing issues. This process will help ensure that only the more complex cases are filed in court venue, and will aid Napa County's court system by reducing the number of Landlord/ Tenant cases that may be filed. These services will also be provided to the City's mobile home park residents, whose housing is governed by Mobile Home Residency Laws and the California Department of Housing and Community Development.

Through the mediation process, FHNV will ensure both parties are fully educated on the proper use of mandatory tenancy forms and documents. Additionally, agency staff will ensure that all parties are clear on the proper procedure(s) and timeline(s) needed to execute next steps, as applicable. FHNV also offers education and outreach- and referral- resources for clients regarding these types of cases, ensuring they are informed of their rights and have alternate options should they seek additional assistance or representation.

General Services to City Staff

FHNV will be available to all City of Calistoga staff to address any requests or circumstances that fall within the outlined scope of services outlined above. City staff will be able to utilize FHNV as a means of support and as a resource to receive data and technical assistance as needed regarding City-wide issues. FHNV will work in conjunction with the Code Enforcement, Building, Fire, and other appropriate departments when issues are identified that require enforcement, and will also inform the appropriate staff when larger issues are discovered that may impact the City or its residents. Such cases will be presented to the appropriate City staff, along with supporting documentation and suggestions for a resolution.

FHNV will also be available to provide training/ presentations to City staff throughout the contract period to ensure staff is familiar with appropriate referrals to FHNV, general knowledge of fair housing and Affirmatively Furthering Fair Housing (AFFH) obligations, and recent housing trends affecting City residents.

Reporting

FHNV shall maintain written records of all inquiries, cases, and complaints, and shall submit a yearly report to City staff that summarizes the number and types of inquiries, as well as demographic data regarding persons served. All records shall be made available to City representatives for review upon request.

As required by Government Code 7550, each document or report prepared by FHNV for or under the direction of the City pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontractor dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

CONSULTANT SERVICES AGREEMENT

**Related to Reduction of THHMs / HAA5s in
Domestic Drinking Water System
And
Reduction of THMs in Wastewater Effluent Discharge**

THIS AGREEMENT is entered into as of the 3 day of April, 2018, by and between the CITY OF CALISTOGA, herein called the "City," and TRUSSELL TECHNOLOGIES, INC., herein called the "Consultant."

Recitals

WHEREAS, City desires to obtain professional services in connection with reduction of TTHMs / HAA5s in domestic drinking water and THMs in wastewater effluent discharge; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. City. The City Manager or his/her designee, shall represent City for all purposes under this Agreement. The City Manager or designee is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant shall assign Brian Pecson, Ph.D., P.E. to have overall responsibility for the progress and execution of this Agreement for Consultant.

3. Scope and Performance of Services.

A. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform

the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence no sooner than March 7, 2018 and be completed by October 31, 2018 or later. Consultant shall perform its services in accordance with the schedule attached hereto as Exhibit A, and incorporated herein by reference. Any changes to these dates in either this Section 3 or Exhibit A must be approved in writing by the Project Manager.

C. Standard of Quality. City relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit A, and incorporated herein by reference. However, in no event shall the amount City pays Consultant exceed Fifty Thousand Dollars (\$50,000). Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

B. Timing of Payment.

Consultant shall submit itemized monthly statements for work performed. City shall make payment, in full, within thirty (30) days after approval of the invoice by the Project Manager.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

D. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

E. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive

paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by City and not part of the litigation brought by City against Consultant.

5. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the City. Failure of the Consultant to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate City authorization.

6. Term. This Agreement shall commence upon its execution and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish City with every reasonable opportunity for City to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to City without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement, unless required by law.

9. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists, or experts for services in connection with this Agreement without the prior written approval of the City.

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the City in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. Consultant hereby agrees to defend, indemnify and hold harmless the City, its officers, agents, employees, volunteers, and servants from and against any and all claims, demands, damages, costs, liabilities, or obligations for bodily injury, death and property damage only to the extent that such claims are caused by the negligence, recklessness or willful misconduct of the Consultant, its officers, employees, agents and subcontractors on account of or arising from Consultant's performance of services. For liability arising out of the performance of professional services, the Consultant shall indemnify, hold harmless, and defend the City, its officers, agents, employees, volunteers, and servants from and against any and all claims, demands, damages, costs, liabilities, or obligations to the extent such claims are caused by the negligent, reckless, or intentional acts or omissions of the Consultant, its officers, employees, agents and subcontractors in the performance of professional services under this Agreement. Notwithstanding any contrary provision herein, it is hereby agreed that the Consultant's obligation to defend or to pay the defense costs of the City arising out of the performance of professional services shall only apply if and when, and to the extent that the parties agree on, or a court or other forum of competent jurisdiction has

determined, the percentage of Consultant's fault for the liability alleged, in which case Consultant shall be obligated to pay the amount equal to the percentage of its fault that has been actually determined.

13. Consultant Not an Agent of City. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

14. Independent Contractor. It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

15. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Consultant represents and warrants to City that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City business license. The City is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's subconsultants (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's Public Works Department office.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. City Not Responsible. City is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against City, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under Consultant's workers' compensation insurance policy which arise from the work performed by Consultant for the City.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the City, or as required by law.

17. Assignment; Subcontractors; Employees.

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the City's prior written consent. Any assignment without such approval shall be void and, at the City's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder. No subcontractor of Consultant shall be recognized by the City as such; rather, all subcontractors are deemed to be employees of the Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

18. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of this Agreement, a General Liability insurance policy insuring it and its firm to an amount not less than \$2,000,000 (Two Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Consultant agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or

omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than \$1,000,000 (One Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide required coverage for Employers' Liability (Coverage B).

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its officials, officers, agents, employees, and volunteers are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to City all certificates of insurance with original endorsements effecting coverage required by this paragraph. Certificates of such insurance shall be filed with City on or before commencement of performance of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, officers, agents, employees, and volunteers.

(8) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30-days' prior written notice by certified mail, return receipt requested, has been given to City. Current certification of such insurance shall be kept on file with the City Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Consultant shall furnish the City with original Certificate(s) of Insurance verifying Consultant's receipt of the insurance coverage required herein.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon 10-days' written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee. In the event the City believes Consultant has damaged City, City shall prepare a list of damages and estimated amount and deliver said list to Consultant for review and comment. Within 5 business days Consultant shall concur, partially concur or disagree with City's position with sufficient explanation for City's consideration. If the parties reach agreement as to damages incurred by City, a Letter Amendment to the Agreement will be executed by both parties. If the parties cannot reach agreement, both parties agree to non-binding mediation, which cost will be split 50/50. If, after the mediation, the parties still have not reached agreement the City shall retain 75% of the amount in dispute and shall undertake any remaining statutory or legal remedies available to resolve the issue.

C. In the event this Agreement is terminated by City without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the City. Consultant, however, shall not be liable for the City's use of incomplete materials nor for the City's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.

21. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the City and Consultant and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the City and Consultant. All provisions of this Agreement are expressly made conditions.

22. Opportunity to Review. Both parties have had an opportunity to review this Agreement and to consult with counsel prior to execution.

23. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

24. Time of the Essence. Time is of the essence of this Agreement.

25. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 72 hours from the time of mailing if mailed as provided in this section.

If to City:

City Clerk
City of Calistoga
1232 Washington Street.
Calistoga, CA 94515

If to Consultant: Joy DiGenti
Trussell Technologies, Inc.
380 Stevens Avenue, Suite 212
Solana Beach, CA 92075

26. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City and all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

C. The City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in the City Manager's office.

27. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

28. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29. City Not Obligated to Third Parties. The City shall not be obligated or liable for payment hereunder to any party other than the Consultant.

30. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

31. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

32. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

Exhibit A: Scope of Work, Schedule of Performance, Compensation.

Exhibit B: List of Subcontractors

33. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

34. News Releases/Interviews. All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

35. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

36. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: _____

Dylan Feik, City Manager

Date: _____

CONSULTANT

By: _____

R. Shane Trussell, President

Date: _____

ATTEST:

Kathy Flamson

By: Kathy Flamson
City Clerk

EXHIBIT A

Scope of Work, Schedule of Performance, Compensation



February 28, 2018

Derek Rayner, P.E., QSD/P, LEED GA
Deputy Director
414 Washington Street
Calistoga, CA 94515

Subject: Professional Services to Reduce THMs / HAA5s In Domestic Drinking Water System and Reduce THMs in Wastewater Effluent Discharge

Dear Derek,

We are pleased to submit the enclosed proposal for professional services to support the City of Calistoga with control of disinfection by-products in the drinking water system and in the wastewater effluent discharge.

Based on our experience with other projects and the information you have provided, we have developed a scope of work that provides strategies to control disinfection by-products at all three locations:

- Dunaweal WWTP: cost effective addition of ammonia, upstream of chlorination
- Napa water supply: TTHM stripping or peroxidation at Dunaweal pump station
- Kimball WTP: treatment process further optimization.

We believe these solutions will build off of and complement the work that you have already done. Please find our proposed scope of services and professional fee attached. We look forward to working with you.

Respectfully,
Trussell Technologies, Inc.

A handwritten signature in black ink, appearing to read "John Kenny", is written over a light blue horizontal line.

John Kenny, P.E.

Enclosure: Scope of Work, Duration, and Budget



SCOPE OF WORK

City of Calistoga Disinfection By-Product Control Drinking Water System & Wastewater Effluent Discharge

This scope of work describes the professional services to be provided by Trussell Technologies, Inc. ("Trussell Tech") to assist the City of Calistoga ("City") in controlling total trihalomethanes (THHMs) and the five regulated haloacetic acids (HAA5s) in the domestic drinking water system, and dibromochloromethane (DBCM) and dichlorobromomethane (DCBM) in the wastewater effluent discharge. The strategies for controlling the disinfection by-products are: (1) addition of ammonia upstream of chlorination at the Dunaweal wastewater treatment plant (WWTP), (2) evaluation of TTHM stripping of the water supply from the City of Napa at the Dunaweal pump station or the use of preoxidants where the chlorine is boosted, and (3) further treatment process optimization at the Kimball Water Treatment Plant (WTP) to control HAA5 formation. These strategies are expected to bring disinfection by-products under the limits with a margin of safety. This work is divided into the following tasks.

TASK 1 – WWTP Ammonia Addition Conceptual Design

Ammonia is currently removed from the wastewater through the biological nitrification process (Biolac) at Dunaweal WWTP. In the absence of ammonia, sodium hypochlorite readily reacts with precursors to form DBCM and DCBM. The re-introduction of ammonia back into the wastewater, changes the chemistry of chlorination and can significantly reduce DCBM and DBCM formation. Trussell Tech will review water quality information collected by operational staff on secondary effluent ammonia, as well as free chlorine and total chlorine residual information to confirm the viability of the ammonia addition strategy. Trussell Tech will review existing disinfection drawings and design criteria. Trussell Tech will conduct proof-of-concept bench-scale testing, which will include an evaluation DBCM and DCBM formation with and without ammonia. Trussell Tech will provide a conceptual design of the ammonia addition system, including design criteria, a process flow & instrumentation sketch, a basic control description and estimated costs to support the implementation of a pilot ammonia addition system by the City. The conceptual design will be provided in a technical communication. It is assumed that the City will ship the sample of filter effluent to the Trussell Tech lab in Pasadena for the proof-of-concept testing.

TASK 2 – Kimball WTP Bench-scale Evaluation

Strategies to limit the formation of HAA5 and TTHMs during drinking water treatment include (1) optimizing the removal of DBP precursors and (2) identifying optimum conditions for treatment processes. Trussell Tech will review water quality, existing operational strategies, drawings, operational data on the Kimball WTP, and results from preliminary bench-scale testing conducted by the City. After review, Trussell Tech will conduct a week-long, bench-scale process optimization study at its Pasadena Water Quality Laboratory. Testing will be undertaken with a sample of the raw water supply to Kimball WTP. The results from the evaluation, and a summary of operational recommendations, including chemical costs, will be presented in a technical communication.



Bench-scale testing may include an evaluation of pH control, alternative coagulants, and alternative coagulant doses, and the use of the JC-9450 pre-oxidant. It is assumed that the City will ship the sample of raw water to the Trussell Tech laboratory in Pasadena, as well as provide samples of their coagulants and the JC-9450. The bench-scale testing will be conducted during the summer or fall of 2018 (which is generally when it is harder to meet HAA5 limits).

TASK 3 – Dunaweal Pump Station TTHM Evaluation

TTHMs are elevated in the water supply coming from the City of Napa, which is boosted at the Dunaweal pump station. Two potential options for the removal of already-formed TTHMs are the use of preoxidants where chlorine is added and air stripping. Trussell Tech will review the City's TTHM Locational Running Annual Average (LRAA) data, the results of additional samples collected by the City at the Dunaweal pump station, and results of preoxidant pilot testing conducted by the City. Based on the results of this sampling and testing, Trussell Tech will evaluate the alternatives and recommend a preferred alternative. The evaluation will include consideration of the ability to conservatively meet TTHM targets, below the maximum contaminant level (MCL), as well as feasibility of implementation and costs. The evaluation will be provided in a technical communication.

Proposed Schedule

The proposed schedule to complete this scope is approximately 8 months.

Scope			Schedule							
TASK	SUBTASK	DESCRIPTION	MAR	APR	MAY	JUN	JULY	AUG	SEP	OCT
1	Task 1: WWTP Ammonia Addition Conceptual Design									
	1.1	Review operational water quality, design criteria and drawings								
	1.2	Proof of concept bench-scale testing of ammonia addition								
	1.3	Conceptual design of ammonia injection system for piloting								
2	Task 2: Kimball WTP Bench-scale Evaluation									
	2.1	Review water quality data, drawings and operational conditions								
	2.2	Conduct a bench-scale evaluation of HAA5 and TTHM control strategies								
	2.3	Provide summary of results and conclusions in technical memorandum								
3	Task 3: Dunaweal Pump Station TTHM Evaluation									
	3.1	Review TTHM LRAA data and additional samples collected by City								
	3.2	Review preoxidant pilot testing results from City								
	3.3	Evaluate stripping versus preoxidant for TTHM control								

Proposed Fee

The proposed schedule to complete this scope is \$49,739. The following figure provides a breakdown of this effort.



**CITY OF CALISTOGA DISINFECTION BY-PRODUCT CONTROL
DRINKING WATER SYSTEM & WASTEWATER EFFLUENT DISCHARGE**

TRUSSELL TECHNOLOGIES PROFESSIONAL SERVICE FEE

CITY OF CALISTOGA DISINFECTION BY-PRODUCT CONTROL: DRINKING WATER SYSTEM & WASTEWATER EFFLUENT DISCHARGE

Scope		Budget						
TASK	SUBTASK DESCRIPTION	TRUSSELL TECHNOLOGIES HOURS				LABOR COST	ODCS	TOTAL COST
		RRT	BP	JK	EO			
1	Task 1: WWTP Ammonia Addition Conceptual Design	2	9	44	20	\$14,278	\$100	\$14,383
	1.1 Review operational water quality, design criteria and drawings		2	16	4	\$4,080		\$4,080
	1.2 Proof of concept bench-scale testing of ammonia addition		1	4	16	\$3,840	\$100	\$3,945
	1.3 Conceptual design of ammonia injection system for piloting	2	6	24		\$6,358		\$6,358
2	Task 2: Kimball WTP Bench-scale Evaluation	10	2	8	92	\$21,470	\$1,000	\$22,520
	2.1 Review water quality data, drawings and operational conditions	2		2	16	\$3,838		\$3,838
	2.2 Conduct a bench-scale evaluation of HAA5 and TTHM control strategies	4		2	40	\$8,756	\$1,000	\$9,806
	2.3 Provide summary of results and conclusions in technical memorandum	4	2	4	36	\$8,876		\$8,876
3	Task 3: Dunaway Pump Station TTHM Evaluation	4	2	36	26	\$12,836	\$0	\$12,836
	3.1 Review TTHM LRAA data and additional samples collected by City	1		8	6	\$2,819		\$2,819
	3.2 Review preoxidant pilot testing results from City	1		8	6	\$2,819		\$2,819
	3.3 Evaluate stripping versus preoxidant for TTHM control	2	2	20	14	\$7,198		\$7,198
Total		16	13	88	138	\$48,584	\$1,100	\$49,739

Trussell Technologies Personnel

RRT = R. Rhodes Trussell, Ph.D., P.E., BCEE

BP = Brian Percson, Ph.D., P.E.

JK = John Kenny, P.E.

EO = Emily Owens-Bennell

Rate

\$239/hr

\$240/hr

\$180/hr

\$180/hr

*Total costs include 5% markup on ODCs

**PROFESSIONAL SERVICES AGREEMENT FOR
LABOR COMPLIANCE CONSULTING SERVICES
BETWEEN
THE CITY OF CALISTOGA
AND
NORTH VALLEY LABOR COMPLIANCE SERVICES
Agreement No. 765**

This Professional Services Agreement for labor compliance consulting services ("Agreement") is made and entered into this 26th day of March, 2018, by **THE CITY OF CALISTOGA** (the "City" or "Owner") and **NORTH VALLEY LABOR COMPLIANCE SERVICES** (the "Consultant" or "NVLCS").

RECITALS

This Agreement is entered into in consideration of the following matters:

WHEREAS, under California Labor Code sections 1720-1860, all workers employed on a public works contract must be paid the prevailing rate of per diem wages as well as Federal Labor Standards set forth in the Davis Bacon Act (40 USC 276 ©; and the Contract Work Hours and Safety Standards Act (CWHSSA) (40 USC 327-333);

WHEREAS, the Department of Industrial Relations ("DIR") and Department of Labor ("DOL") have established regulations governing the payment of prevailing wages on public works contracts;

WHEREAS, any Awarding Agency using funds derived from the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2006 ("Proposition 84") is required to implement and enforce their own state approved labor compliance program or contract with a 3rd party to enforce their state approved program, to ensure the payment of prevailing wages for any project using such funds;

WHEREAS, the City is in need of professional services for labor compliance consulting for the "Feige Tank Replacement Project" ("Project");

WHEREAS, the Consultant has the necessary qualifications to provide such services for the Project; and

WHEREAS, the parties desire by this Agreement to establish the terms and conditions for retention of the Consultant to provide the professional services described herein.

AGREEMENT

NOW, THEREFORE, the City and the Consultant do agree as follows:

PART I DEFINITIONS

Additional Services shall mean any services not provided for under this Agreement and as defined in Part II, Section 4 hereof.

Agreement shall mean this Professional Services Agreement as the same now exists, or as it may, from time to time be amended by any supplemental agreement entered into by the parties pursuant to the provisions hereof.

Bond Acts shall mean the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2006.

City shall mean The City of Calistoga.

Consultant shall mean North Valley Labor Compliance Services, a sole proprietorship.

Compensation shall mean the costs of Services as established in the Compensation Schedule attached hereto as Exhibit "B"

Department of Industrial Relations or DIR shall mean the California Department of Industrial Relations.

Department of Labor or DOL shall mean the United States Department of Labor.

Effective Date shall mean the date of execution of this Agreement.

Labor Compliance Program or LCP shall mean the City of Calistoga Labor Compliance Program, which will be submitted for approval to the Department of Industrial Relations.

Menu of Services shall mean the list of tasks to be provided by the Consultant under this Agreement as presented in Exhibit "A."

Project(s) shall mean any new construction or modernization projects being constructed by the City using funds derived from the Bond Acts, or as otherwise directed by the City.

Services or Work shall mean the labor compliance consulting services provided by the Consultant under this Agreement.

Site shall mean any real property owned or leased by the City, or over which the City has a utility easement or right of way for which funds derived from the Bond Acts may be used to improve the property.

PART II
PROFESSIONAL SERVICES: TERMS & CONDITIONS

Section 1 – Purpose

The purpose of this Agreement is as follows:

- A. To establish the terms and conditions for the provision of labor consulting services by the Consultant to the City.
- B. To establish the Menu of Services to be provided by the Consultant.
- C. To set forth the relationship between each party and establish the duties and responsibilities of each party hereunder.

Section 2 – Menu of Services

The Consultant shall provide the City with the Services described in the Menu of Services attached hereto as Exhibit "A."

Section 3 – Compensation

- A. The Consultant shall be compensated based on the hourly rates set forth in Exhibit "B" and within the not to exceed amounts designated for each project therein. The Consultant shall not perform any work in excess of the not to exceed amounts listed in Exhibit "B" without the express written consent of the City. The Consultant shall be reimbursed for appropriate direct costs, other than administrative overhead and salary costs in accordance with the schedule set forth in Exhibit "C" provided however that the Consultant may not charge an hourly rate for travel time.
- B. The City shall compensate the Consultant for performing Additional Services described in Exhibit "D", within timeframes established in Part II Section 3 b.
- C. The City shall pay the Consultant within thirty (30) calendar days of receipt of Consultant's monthly invoice, which will set forth the hours actually worked in each billing period and the project to which such hours apply.
- D. Invoices shall be sent to: The City of Calistoga.

Section 4 – Additional Services

The Consultant shall not be compensated for any Services other than those described in the Menu of Services ("Additional Services" Exhibit "D"), except as provided in this paragraph. If Additional Services seem merited by the Consultant or the City, and informal consultations between the parties indicate that such Services are warranted, the Additional Services shall be approved in writing by the City in the following manner: a letter outlining the Additional Services shall be forwarded to the City by the Consultant with a statement of estimated cost changes to the fee or time schedule. The City shall review the letter and may approve or reject the Additional

Services and costs proposed in the letter. The letter shall be executed by both parties before performance of any such Additional Services or the City will not be required to pay for the changes in the Menu of Services.

Section 5 – Maintenance of Records

Books, documents, papers, accounting records, and other evidence pertaining to Work done and costs incurred pursuant to this Agreement shall be maintained by the Consultant and made available for inspection, audit and copying by the City, DIR or DOL at all reasonable times during the term of this Agreement and for three (3) years after the close-out date of each Project or as otherwise required by law. Upon expiration of the three (3) year period, the Consultant shall return the records to the City.

Section 6 - District Responsibilities

- A. The City shall provide to NVLCS complete information regarding the City's requirements for the Program.
- B. The City shall examine information submitted by NVLCS and shall render decisions pertaining thereto promptly.
- C. The City shall furnish legal, accounting, contract review and insurance counseling services as may be necessary for the Program.
- D. The City shall furnish required information and approvals and perform its responsibilities and activities in a timely manner to facilitate orderly progress of the work in cooperation with NVLCS, consistent with this Agreement. At the request of NVLCS, sufficient copies of the Contract Documents shall be furnished to NVLCS to permit the timely performance of services, by the City at the City's expense.

Section 7 – Ownership and Use of Work

All documents and materials prepared pursuant to this Agreement shall be considered the property of the City for which it was prepared, and will be turned over to the City upon demand, but in any event upon completion of the Work. The City has the right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other documents and materials prepared under this Agreement without the permission of the Consultant. All documents and materials shall be delivered in a reproducible form. As used herein, "documents and materials" include, but are not limited to, any original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, and computer files prepared or developed pursuant to this Agreement.

Section 8 – Findings Confidential

Any reports, information, data or materials given to or prepared or assembled by the Consultant under this Agreement are confidential and shall not be made available to any individual or organization by the Consultant without prior written approval of the City.

Section 9 – Conflict of Interest

The Consultant hereby expressly covenants that no interest presently exists, nor shall any interest, direct or indirect, be acquired during the term of this Agreement that would conflict in any manner with the performance of Services pursuant to this Agreement.

Section 10 – Term of Agreement

The initial term of this Agreement shall be for one (1) year from the Effective Date with completion of the project (all certified payroll documents received). NVLCS will complete the final processing of labor compliance reports for the City, DIR and DOL with the anticipated completion of 3 months after project completion. It is intended that this Agreement can be extended or amended consistent with the intent of the parties, the requirements of the Department of Industrial Relations and the California Labor Code and in accordance with Section 27 hereof.

Section 11 – Time of Performance

The Consultant shall commence on the Effective Date and perform Services in a prompt and timely manner.

Section 12 – Delays in Performance

Neither the City nor the Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement such circumstances include but are not limited to: abnormal weather conditions, floods, earthquakes, fire, epidemics, war, riots and other civil disturbances, strikes, lockouts, work slowdowns, and other labor disturbances, sabotage or judicial restraint.

Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

Section 13 – Compliance with Law

- A. The Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government. If the Consultant's failure to comply with applicable laws, ordinances, codes and regulations results in a claim for damage or liability to the City, the Consultant shall be responsible for indemnifying and holding the City harmless as provided in this Agreement.

Section 14 – Standard of Care

The Consultant's Services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

Section 15 – Assignments

The Consultant shall not assign, delegate, sublet, or transfer this Agreement or any rights under or interest in this Agreement to perform Services without prior written consent of the City, which may be withheld for any reason. A consent to one assignment shall not be deemed to be consent to any subsequent assignment.

Section 16 – Independent Consultant

The Consultant is retained as an independent consultant and is not an agent or employee of the City. No employee or agent of the Consultant shall by this Agreement become an agent or employee of the City. The Consultant shall have no authority, express or implied, pursuant to this Agreement to bind the City to any obligation whatsoever, except as specifically provided in writing by the City.

Section 17 – Integration

This Agreement represents the entire understanding of the City and the Consultant as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered hereunder. To the extent that any provision or clause contained in an attachment to this Agreement conflicts with a provision or clause in the Agreement, the provision or clause in this Agreement shall control. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

Section 18 – Insurance

The Consultant shall provide and maintain at all times during the performance of this agreement, the following professional liability and automobile liability insurance:

Coverage - Coverage shall be at least as broad as the following:

- A. Coverage for Professional Liability appropriate to the Consultant's profession covering Consultant's wrongful acts, negligent actions, errors or omissions. The retroactive date (if any) is to be no later than the effective date of this agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the contract work. Consultant shall purchase a one-year extended reporting period i) if the retroactive date is advanced past the effective date of this Agreement; ii) if the policy is canceled or not renewed; or iii) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.
- B. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any auto)

Limits - The Consultant shall maintain limits no less than the following:

- A. Professional Liability - One million dollars (\$1,000,000) per claim and annual aggregate.
- B. Automobile Liability - Three Hundred Thousand (\$300,000) for bodily injury and property damage each accident limit.

Required Provisions -

- A. The policies specified above are to state, or be endorsed to state, that coverage shall not be canceled by the insurance carrier or the Consultant, except after thirty (30) days (10 days for non-payment of premium) prior written notice by U.S. mail has been given to City.
- B. Any failure to comply with the reporting or other provisions of the policies including breaches and warranties shall not affect coverage provided to the City, its directors officers, employees, or authorized volunteers.
- C. All policies specified above shall be primary to any insurance maintained by the City that may provide additional coverage for any loss.
- D. The City of Calistoga, its officials, agents, employees, and volunteers are hereby added as additional insured's, but only as respects to work done by, for, or on behalf of the named insured.

Such liability insurance shall indemnify the Consultant and his/her sub-consultants against loss from liability imposed by law upon, or assumed under contract by, the Consultant or his/her sub-consultants for damages on account of such bodily injury (including death), property damage, personal injury, completed operations, and products liability.

The automobile liability policy shall cover all owned, non-owned, and hired automobiles.

All of the insurance shall be provided on policy forms and through companies satisfactory to the City.

Workers' Compensation and Employer's Liability Insurance - The Consultant and all sub-consultants shall cover or insure under the applicable laws relating to workers' compensation insurance, all of their employees employed directly by them or through sub-consultants in carrying out the work contemplated under this agreement, all in accordance with the "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any Acts amendatory thereof.

Deductibles and Self-Insured Retentions - Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.

Acceptability of Insurers - Insurance is to be placed with insurers having a current A.M. Best rating of no less than A-:VII or equivalent or as otherwise approved by the City.

Evidences of Insurance - Prior to execution of the agreement, the Consultant shall file with City a certificate of insurance (Acord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this agreement. Such evidence shall also include confirmation that coverage includes or has been modified to include Required Provisions A, B, C & D.

The Consultant shall, upon demand of the City, deliver to the City such policy or policies of insurance and the receipts for payment of premiums thereon.

Continuation of Coverage - If any of the required coverages expire during the term of this agreement, the Consultant shall deliver the renewal certificate(s) to the City at least ten (10) days prior to the expiration date.

Sub-Consultants - In the event that the Consultant employs other consultants (sub-consultants) as part of the services covered by this agreement, it shall be the Consultant's responsibility to require and confirm that each sub-consultant meets the minimum insurance requirements specified above.

Section 19 – Mutual Indemnity

- A. NVLCS shall, with respect to all work which is covered by or incidental to this Agreement, defend, indemnify and hold City harmless from and against any and all liens and claims asserted by firms or individuals claiming through NVLCS, and all claims liability, loss, damage, costs, or expenses, including reasonable attorney's fees, expert's fees, awards, fines, or judgments, arising by reason of any claim for the death or bodily injury to persons or injury to property, to the extent caused by NVLCS' negligence or willful misconduct. However, NVLCS shall not be obligated under this Agreement to indemnify City to the extent that the damage is caused by the negligence or willful misconduct of City or its agent or servants other than NVLCS.
- B. Waiver of Subrogation: The City and NVLCS waive all rights against each other and against the Contractor, Design Professionals, consultant, agents, and employees of the other for damages during construction covered by any property insurance as set forth in the Construction Contract.

Section 20 – Laws, Venue, and Attorneys' Fees

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state court situated in the County of Napa, State of California, or in a federal court with jurisdiction. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, as determined by the court.

Section 21 – Termination or Abandonment

- A. The City may terminate this Agreement, with or without cause, at any time by giving thirty (30) days written notice of termination to the Consultant. In the event

such notice is given, the Consultant shall cease immediately all Services in progress.

- B. The Consultant may terminate this Agreement at any time upon thirty (30) days written notice of termination to the City.
- C. If any party hereunder fails to perform any material obligation under this Agreement, then, in addition to any other remedies, the non-breaching parties may terminate this Agreement immediately upon written notice.
- D. Upon termination of this Agreement, all property belonging to the City which is in Consultant's possession shall be returned to the City. The Consultant shall furnish the City with a final invoice for Services performed by the Consultant. The City shall have no obligation to pay the Consultant for Services performed after termination of this Agreement.

Section 22 – Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

DISTRICT:

City of Calistoga
1232 Washington Street
Calistoga, CA 94515
Phone (707) 942-2782

CONSULTANT:

North Valley Labor Compliance Services
6955 N. Durango Drive Suite 1115-254
Las Vegas, NV 89149
Phone 530-674-3033 or 714-408-8687

Attention: Mike Kim

Attention: Carolyn Lay

and shall be effective upon receipt thereof.

Section 23– Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

Section 24 – Severability

The unenforceability, invalidity or illegality of any provision(s) or portion thereof of this Agreement shall not render the other provisions unenforceable, invalid or illegal. Waiver by any party of any portion of this Agreement shall not constitute a waiver of any other portion thereof.

Section 25 – Time of Essence

Time is of the essence for each and every provision of this Agreement.

Section 26 – Successors and Assigns

This Agreement shall be binding on the successors and assigns of the parties, and shall not be assigned by the Consultant without prior written consent of the City.

Section 27 – Amendments

This Agreement shall not be amended, modified or changed in any way without the prior written consent of the City.

Section 28 – Interpretation

The agreements contained herein shall not be construed in favor of or against any party but shall be construed as if all parties prepared this Agreement.

Section 29 – Counterparts

This Agreement may be executed in counterparts, all of which, when taken together, shall constitute a fully executed original.

Section 30 – Exhibits and Recitals

All Exhibits and Recitals contained herein are hereby incorporated into this Agreement.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

DATE: 3/26/18

CITY: THE CITY OF CALISTOGA

By: M.T. Kim
Mike Kim, Director of Public Works

DATE: 3/25/18

CONSULTANT: NORTH VALLEY LABOR
COMPLIANCE SERVICES

By: Carolyn Lay
Carolyn Lay, Owner
Federal Tax I.D. Number 20-3064636

EXHIBIT "A"

MENU OF SERVICES

I. EDUCATION

TASK: GENERAL CONSULTING

1. The Consultant shall provide the City and its staff with general consulting services on labor compliance, as required by the City.
2. The Consultant shall cooperate and assist the City's construction management team, legal counsel, and other City consultants with issues related to labor compliance as necessary.
3. The Consultant shall remain apprised of any changes, additions or other modifications to applicable labor law.

TASK: TRAINING

1. The Consultant shall provide labor compliance training for the following individuals and entities: (a) the City's facilities department, (b) construction managers, (c) and any other City consultants that may require such training.

II. BID ADVERTISEMENT AND CONTRACT REVIEW

TASK: GUIDANCE WITH CORRECT PREVAILING WAGE LANGUAGE

1. The Consultant shall review contract documents and guide the City so that correct language is included in the bid advertisement, notice to bidders, information to bidders and construction contract/agreement.

III. SERVICES TO BE COMPLETED

- Conduct LCP Workshop, via internet, phone, fax, email etc. with awarded contractors
- Provide the City of Calistoga with correct prevailing wage sheets for the project from the Department of Industrial Relations.

EXHIBIT "B"

COMPENSATION SCHEDULE

I. Hourly Rates

POSITION	RATE/HOUR
Carolyn Lay, Labor Compliance Specialist	\$ 75.00
Labor Compliance Specialists	\$ 75.00

II. Not to Exceed Amount for Project

PROJECT	AMOUNT
Monitor and enforce prevailing wage on the Feige Tank Replacement Project, total Not to Exceed	\$14,800.00

EXHIBIT "C"

ALLOWABLE REIMBURSABLE

NVLCS will be reimbursed for reasonable expenses incurred in conjunction with the project. The items allowable for reimbursement are as follows:

1. Cost of printing and distributing documentation and reports at .10 cents a copy.
2. Cost of postage, UPS, Federal Express, and other deliveries.
3. Cost of sub-consultants hired by Consultant as approved by the City in advance.
4. Cost of other items as required, with prior approval from City.

EXHIBIT "D"

ADDITIONAL SERVICES

At the request of the City, NVLCS shall perform Additional Services and NVLCS shall be compensated for same as provided in Part II Section 3 A. & C. at the rate established in EXHIBIT "B", which may EXCEED the NOT TO EXCEED value for each project.

1. Preparation for and serving as a witness in connection with any public or private HEARING or arbitration, mediation, disciplinary or enforcement action, or legal proceeding.

iCompass Services Agreement

THIS SERVICES AGREEMENT (the “Agreement”) is entered into as of the April 30, 2018 (the “Effective Date”), between iCompass Technologies Inc., (“iCompass”) and City of Calistoga, with an address at 1232 Washington Street Calistoga, CA 94515 (the “Customer”).

1.0 Services.

- 1.1 Provision of Services.** Customer’s and Customer’s end-users (“End Users”) may access and use the services described in Section 9.0 of this Agreement and any other services that may be ordered by the Customer from time to time pursuant to a valid subscription (the “Services”) in accordance with the terms of this Agreement.
- 1.2 Facilities and Data Processing.** iCompass will use, at a minimum, industry standard technical and organizational security measures to store data provided by Customer in connection with the Services (“Customer Data”). These measures are designed to protect the integrity of Customer Data and guard against unauthorized or unlawful access.
- 1.3 Modifications to the Services.** iCompass may update the Services from time to time. If iCompass updates the Services in a manner that materially improves functionality, iCompass will inform the Customer.

2.0 Customer Obligations.

- 2.1 Customer Administration of the Services.** Customer may specify End Users as “Administrators”. Administrators have the ability to monitor, restrict, or terminate access to Services. iCompass’ responsibilities do not extend to internal management or administration of the Services. Customer is responsible for: (i) maintaining the confidentiality of passwords and Administrator accounts; (ii) managing access to Administrator accounts; and (iii) ensuring that Administrators’ use of the Services complies with this Agreement.
- 2.2 Compliance.** Customer is responsible and liable for use of the Services by its End Users and all consequences of such use (including any and all consequences and liabilities resulting from End Users making Customer Data publicly accessible through the Services). Customer will obtain from End Users any consents necessary to allow Administrators to engage in the activities described in this Agreement and to allow iCompass to provide the Services. Customer will comply with laws and regulations applicable to Customer’s use of Services, if any.
- 2.3 Unauthorized Use & Access.** Customer will prevent unauthorized use of the Services by its End Users and terminate any unauthorized use of or access to the Services. Customer will promptly notify iCompass of any unauthorized use of or access to the Services.
- 2.4 Restricted Uses.** Customer will not and will ensure that its End Users do not: (i) sell, resell, or lease the Services; or (ii) reverse engineer or attempt to reverse engineer the Services, nor assist anyone else to do so.
- 2.5 Third Party Requests.**
 - 2.5.1** “Third Party Request” means a request from a third party for records relating to an End User’s use of the Services including information regarding an End User. Third Party Requests may include valid search warrants, court orders, or subpoenas, or any other request for which there is written consent from End Users permitting a disclosure.
 - 2.5.2** Customer is responsible for responding to Third Party Requests via its own access to information policies. Customer will seek to obtain information required to respond to Third Party Requests and will contact iCompass only if it cannot obtain such information despite diligent efforts.
 - 2.5.3** iCompass will make reasonable efforts, to the extent allowed by law and by the terms of the Third Party Request, to: (A) promptly notify Customer of iCompass receipt of a Third Party Request; (B) comply with Customer’s reasonable requests regarding efforts to oppose a Third Party Request; and (C) provide Customer with information or tools required for Customer to respond to the Third Party Request (if Customer is otherwise unable to obtain the information). If Customer fails to promptly respond to any Third Party Request, then iCompass may, but will not be obligated to do so.

3.0 Intellectual Property Rights; Confidentiality

- 3.1 Reservation of Rights.** Except as expressly set forth herein, this Agreement does not grant (i) iCompass any intellectual Property Rights in the Customer Data or (ii) Customer any Intellectual Property Rights in the Services, any other products or offerings of iCompass, iCompass trademarks and brand features, or any improvements, modifications or derivative works of any of the foregoing. “Intellectual Property Rights” means current and future worldwide rights under patents, copyright, trade secret, trademark, moral rights and other similar rights.
- 3.2 Suggestions.** iCompass may, at its discretion and for any purpose, use, modify, and incorporate into its products and services, and license and sublicense, any feedback, comments, or suggestions Customer or End Users send iCompass or post in iCompass’ online forums without any obligation to Customer.
- 3.3 Confidential Information.** Customer understands and agrees that it will not reveal, publish or otherwise disclose to any person, firm or corporation, without written authorization of iCompass, or except as required by law, any Confidential Information of iCompass, including without limitation any trade secrets, confidential knowledge, data or other proprietary information relating to the Services. “Confidential Information” means all information, written or oral, relating to the business, operations, services, facilities, processes, methodology, technologies, intellectual property, research and development, customers, strategy or other confidential or proprietary materials of iCompass.

4.0 Fees & Payment.**4.1 Fees.**

- 4.1.1** Customer will pay iCompass for all applicable fees upfront annually.
- 4.1.2** Customer will pay any amounts related to the Services as per payment terms detailed on the applicable invoice. Unless otherwise indicated, all dollar amounts referred to in the Agreement are in U.S. funds.
- 4.1.3** Customer acknowledges that while it may choose to delay the implementation of the Services, this is not a valid reason for withholding payment on any invoices. Furthermore, the Customer will not withhold payment on any invoices for any other reason.
- 4.1.4** iCompass reserves the right to increase annual fees, as listed, on an annual basis. Increases will be the larger of the 12-Month Consumer Price Index (not seasonally adjusted), as published by the United States Department of Labor, or five (5) percent.

4.2 Taxes. Customer is responsible for all taxes. iCompass will charge tax when required to do so. If Customer is required by law to withhold any taxes, Customer must provide iCompass with an official tax receipt or other appropriate documentation.

4.3 Purchase Orders. If Customer requires the use of a purchase order or purchase order number, Customer (i) must provide the purchase number at the time of purchase and (ii) agrees that any terms and conditions on a Customer purchase order will not apply to this Agreement or the Services provided hereunder and are null and void.

5.0 Term & Termination.

- 5.1 Term.** The initial term of this Agreement shall be one year commencing on the Effective Date, which shall automatically renew for a further period of one year upon each expiry of the then current term, unless either party provides written notice to the other party of its intention not to renew at least 45 days prior to the end of the then current term.
- 5.2 Termination for Breach.** If, for any reason during the first 6 months after purchase, the Customer is dissatisfied with the Services or the implementation or other professional services provided by iCompass, all funds paid under this Agreement will be refunded and future commitments waived. Following the first 6 months, either party may terminate this Agreement, at its option, with 45 days' written notice.
- 5.3 Effects of Termination.** If this Agreement terminates: (i) the rights granted by iCompass to Customer will cease immediately (except as set forth in this section); (ii) iCompass may provide Customer access to its account at then-current fees so the Customer may export its Customer Data; and (iii) after a reasonable period of time, iCompass may delete any Customer Data relating to Customer's account. The following sections will survive expiration or termination of this Agreement: 2.5 (Third Party Requests), 3.0 (Intellectual Property Rights; Confidentiality), 4.0 (Fees & Payments), 5.3 (Effects of Termination), 6.0 (Indemnification), 7.0 (Exclusion of Warranties; Limitation of Liability), and 8.0 (Miscellaneous).

6.0 Indemnification.

- 6.1 By Customer.** Customer will indemnify, defend, and hold harmless iCompass from and against all liabilities, damages, and costs (including settlement costs and reasonable attorney's fees) arising out of any claim by a third party against iCompass regarding: (i) Customer Data; (ii) Customer's use of the Services in violation of this Agreement; or (iii) End Users' use of the Services in violation of this Agreement.
- 6.2 By iCompass.** iCompass will indemnify, defend and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorney's fees) arising out of any claim by a third party against Customer to the extent based on an allegations that iCompass' technology used to provide the Services to the Customer infringes or misappropriates any copyright, trade secret, patent or trademark right of the third party. In no event will iCompass have any obligations or liability under this section arising from: (i) use of any Services in a modified form or in combination with materials not furnished by iCompass and (ii) any content, information, or data provided by Customers, End Users, or other third parties.
- 6.3 Possible Infringement.** If iCompass believes the Services infringe or may be alleged to infringe a third party's Intellectual Property Rights, then iCompass may (i) obtain the right for Customer, at iCompass' expense, to continue using the Services; (ii) provide a non-infringing functionally equivalent replacement for the Services; or (iii) modify the Services so that they no longer infringe. If iCompass does not believe the options described in this section are reasonable then iCompass may suspend or terminate this Agreement and/or Customer's use of the affected Services with no further liability or obligation to the Customer other than the obligation to provide the Customer with a pro-rata refund of pre-paid fees for the affected portion of the Services.
- 6.4 General.** The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party will have full control and authority over the defense, except that: (i) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed and (ii) the other party may join in the defense with its own counsel at its own expense. The indemnities above are iCompass' and Customer's only remedy under this Agreement for violation by the other party of a third party's Intellectual Property Rights.

7.0 Exclusion of Warranties; Limitation of Liability.

- 7.1 Exclusion of Warranties.** Except as explicitly set forth in this Agreement, iCompass makes no other representation, warranty or condition, express or implied, and expressly excludes all implied or statutory warranties or conditions of merchantability, merchantable quality, durability or fitness for a particular purpose, and those arising by statute or otherwise in law or from a course of dealing or usage of trade with respect to the Services. iCompass does not make any representations or warranties of any kind to client with respect to any third party software forming part of the Services.

- 7.2 Limitation on Indirect Liability.** To the fullest extent permitted by law, neither party will be liable to the other for any indirect, incidental, special or consequential damages of any kind whatsoever and however caused, whether arising under contract, tort (including negligence) or otherwise, including (without limitation) loss of production, loss of or corruption to data, loss of profits or of contracts, loss of business, loss of management or operation time and loss of goodwill or anticipated savings, even if the party has been notified of the possibility thereof or could have foreseen such claims.
- 7.3 Limitation on Amount of Liability.** To the fullest extent permitted by law, iCompass' aggregate liability under this Agreement will not exceed the amount paid by Customer to iCompass hereunder during the twelve months prior to the event giving rise to liability.

8.0 Miscellaneous.

- 8.1 Terms Modification.** iCompass may wish to revise this Agreement from time to time. If a revision, in iCompass' sole discretion, is material, iCompass will notify Customer and possibly request that an Amendment to this Agreement be agreed upon and signed. If Customer does not agree to the revised Agreement terms, Customer may terminate the Services within 45 days of receiving notice of the change.
- 8.2 Entire Agreement.** The Agreement including the invoice and order form provided by iCompass, constitutes the entire agreement between Customer and iCompass with respect to the subject matter of this Agreement and supersedes and replaces any prior or contemporaneous understandings and agreements, whether written or oral, with respect to the subject matter of this Agreement. If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: this Agreement, then the invoice, then the order form.
- 8.3 Governing Law.** This Agreement will in all respects be governed exclusively by and construed in accordance with the laws of the State of California.
- 8.4 Severability.** Unenforceable provisions will be modified to reflect the parties' intention and only to the extent necessary to make them enforceable, and the remaining provisions of the Agreement will remain in full effect.
- 8.5 Waiver or Delay.** Any express waiver or failure to exercise promptly any right under the Agreement will not create a continuing waiver or any expectation of non-enforcement.
- 8.6 Assignment.** Customer may not assign or transfer this Agreement or any rights or obligations under this Agreement without the written consent of iCompass. iCompass may not assign this Agreement without providing notice to Customer, except iCompass may assign this Agreement or any rights or obligations under this Agreement to an affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets without providing notice. Any other attempt to transfer or assign is void.
- 8.7 Force Majeure.** Except for payment obligations, neither iCompass nor Customer will be liable for inadequate performance to the extent caused by a condition that was beyond the party's reasonable control (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action and Internet disturbance).

9.0 Services.

- 9.1** iCompass shall provide the following Services to the Customer for the Fees indicated:

Service	Annual Fee
Meeting Manager Pro	\$6,000

- 9.2 Storage.** Unlimited meeting related content and up to 5GB of storage for non-meeting related content is included in the fees set out in this Agreement. Additional storage can be purchased as required.

IN WITNESS WHEREOF iCompass and the Customer have executed this Agreement as of the Effective Date.

<u>City of Calistoga</u> by its authorized signatory: Name: Dylan Feik Title: City Manager Date: Billing Contact: Kathy Flamson Billing's Email: kflamson@ci.calistoga.ca.us	iCompass Technologies Inc. by its authorized signatory: Name: Scott Neufeld Title: Director of Demand Generation Date: Account Executive: Josh Fruecht Account Executive's Email: jfruecht@icompasstech.com
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**AGREEMENT FOR PURCHASE AND SALE OF REAL
PROPERTY (INCLUDING ESCROW INSTRUCTIONS)**

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (the "Agreement") is entered into as of April 18, 2018, (the date of last execution of this Agreement by the parties as indicated on the signature page) by and between the City of Calistoga, a municipal corporation (the "Purchaser"), and Calistoga Spa, Inc., a California corporation (the "Seller").

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Agreement to Sell and Purchase. Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, upon the terms and for the consideration set forth in this Agreement, that certain vacant parcel of real property, together with any fixtures and appurtenant improvements thereon (collectively, the "Property"), situated in the City of Calistoga, County of Napa, State of California, located on Eddy Street and described as Assessor's Parcel 011-215-001-000.

2. Purchase Price. The total purchase price for the Property shall Five Hundred Thousand Dollars (\$500,000) (the "Purchase Price"), which shall be paid in two installments of \$250,000 dollars each, to be referred to as the "First Installment" and the "Second Installment." Purchaser shall pay the Purchase Price by depositing into Escrow, on or before the date for close of Escrow, immediately available funds in the amount of the First Installment. The Second Installment is a continuing obligation of Purchaser and shall be paid by City on or before January 1, 2019, provided that Seller has removed all ash stored onsite pursuant to Section 8.1(g).

3. Conveyance of Title. Seller agrees to convey by Grant Deed to Purchaser marketable fee simple title to the Property, free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases, and taxes except such matters which are acceptable to Purchaser in its sole discretion, following Purchaser's review of the preliminary title report as provided in this Section 3. Within ten (10) days after the date of this Agreement, Old Republic Title Company (the "Title Company") shall deliver to Purchaser an updated standard CLTA preliminary title report (the "Report") with respect to the title to the Property, together with legible copies of the exceptions set forth in the Report. Purchaser shall have twenty (20) days from its receipt of the Report within which to give written notice to Seller of Purchaser's approval or disapproval of any of such exceptions. Purchaser's failure to give written approval or disapproval of the Report within such time limit shall be deemed disapproval of the Report. No deeds of trust, mortgages or other liens, except for the lien of property taxes and assessments not yet due, shall be approved exceptions. If Purchaser notifies Seller of its disapproval of any exceptions in the Report, or is deemed to have disapproved the Report, Seller shall have the right, but not the obligation, to remove any disapproved exceptions within twenty (20) days after receiving written notice of Purchaser's disapproval or provide assurances satisfactory to Purchaser that such exception(s) will be removed on or before the Closing. If Seller cannot or does not elect to remove any of the disapproved exceptions within that period, Purchaser shall have ten (10) days after the expiration of such twenty (20) day period to either give the Seller written notice that Purchaser elects to proceed with the purchase of the Property subject to the disapproved exceptions or to give the Seller written notice that the Purchaser

elects to terminate this Agreement. Purchaser's failure to give written notice within such ten (10) day period shall be deemed Purchaser's election to terminate this Agreement. The Purchaser shall have the right to approve or disapprove any exceptions reported by the Title Company after Purchaser has approved the condition of title for the Property. Seller shall not voluntarily create any new exceptions to title following the date of this Agreement.

4. Title Insurance Policy. Escrow Agent shall, following recording of the Grant Deed, provide Purchaser with a CLTA (or ALTA, at the request of the Purchaser) policy of title insurance in the amount of the Purchase Price, issued by the Title Company, together with any endorsements reasonably requested by the Purchaser, showing fee simple title to the Property vested in Purchaser, subject only to the exceptions approved by Purchaser as set forth in Section 3 and the printed exceptions and stipulations in the policy. Purchaser shall pay the title policy premium.

5. Escrow. Purchaser and Seller have opened or shall open an escrow (the "Escrow") in accordance with this Agreement at Old Republic Title Company (the "Escrow Agent"). This Agreement, together with the escrow instructions prepared by Escrow Agent and executed by Purchaser and Seller, constitutes the joint escrow instructions of Purchaser and Seller, and Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this Escrow in the shortest possible time.

5.1 Grant Deed. Prior to the close of Escrow Seller shall execute, acknowledge and deliver into Escrow a Grant Deed (the "Grant Deed") in a form provided by Title Company. A Certificate of Acceptance to be attached to the Grant Deed shall be executed, acknowledged and delivered into Escrow by Purchaser on or before the close of Escrow. Purchaser and Seller agree to deposit with Escrow Agent any additional instruments as may be necessary to complete this transaction.

5.2 Insurance. Insurance policies for fire or casualty are not to be transferred, and Seller will cancel its own policies after close of escrow.

5.3 Escrow Account. All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other escrow trust account in any state or national bank doing business in the State of California. All disbursements shall be made by check from such account.

6. Pro Rations; Tax Adjustment Procedure. Escrow Agent is authorized and is instructed to comply with the following pro ration and tax adjustment procedure:

6.1 Delinquent Taxes. Escrow Agent shall pay, and charge Seller for, any unpaid delinquent property taxes and/or penalties and interest thereon, and for any delinquent assessments or bonds against the Property.

6.2 Current Taxes. Escrow Agent shall pay, and charge Seller for, any portion of current property taxes and assessments and any penalties and interest thereon allocable to the period prior to the close of Escrow. The portion of current property taxes which would otherwise be allocable to the period after the close of Escrow shall not be allocated, as Purchaser is exempt from payment of property taxes.

6.3 Refund of Taxes. Seller shall have the sole right, after close of Escrow, to apply to the Napa County Tax Collector for refund of any excess property taxes which have been paid by Seller with respect to the Property. This refund would apply to the period after Purchaser's acquisition of the Property, pursuant to Revenue and Taxation Code Section 5096.7.

7. Escrow Agent Authorization. Escrow Agent is authorized to, and shall:

7.1 Pay and Charge Seller. Pay and charge Seller for any amount necessary to place title in the condition necessary to satisfy Section 3 of this Agreement.

7.2 Pay and Charge Purchaser. Pay and charge Purchaser for any Escrow fees, recording fees and other costs and expenses of Escrow payable under Section 7.8, below.

7.3 Disbursement. Disburse funds, record the Grant Deed and Certificate of Acceptance, and deliver the title policy to Purchaser, when conditions of the Escrow have been fulfilled by Purchaser and Seller.

7.4 Close of Escrow. The term "close of Escrow," if and where written in these instructions, shall mean the date the Grant Deed and other necessary instruments of conveyance are recorded in the office of the Napa County Recorder. Recordation of instruments delivered through this Escrow is authorized, if necessary or proper in the issuance of the policy of title insurance pursuant to Section 4 hereof.

7.5 Time Limits. All time limits within which any matter specified is to be performed may be extended by mutual agreement of the parties. Any amendment of, or supplement to, any instructions must be in writing.

7.6 Time of the Essence. TIME IS OF THE ESSENCE IN THESE INSTRUCTIONS AND ESCROW IS TO CLOSE ON OR BEFORE THE DATE THAT IS 60 DAYS FROM THE EFFECTIVE DATE. If this Escrow is not in condition to close by such date, then any party who has fully complied with this Agreement may, in writing, demand the return of its money or property; provided, however, no demand for return shall be recognized until five (5) days after Escrow Agent shall have mailed copies of demand to all other parties at the respective addresses shown in Section 21, below, and if any objections are raised within such five (5) day period, Escrow Agent is authorized to hold all money, papers and documents until instructed by a court of competent jurisdiction or mutual instructions.

7.7 Escrow Agent Responsibility. The responsibility of the Escrow Agent under this Agreement is expressly limited to Sections 1, 2, 3, 4, 5, 6, 7, 8, 10 and 11 of this Agreement and to its liability under any policy of title insurance issued in regard to this Escrow.

7.8 Escrow Fees, Charges and Costs. Purchaser agrees to pay all Purchaser's and Seller's usual fees, charges, and costs which arise in this Escrow.

7.9 FIRPTA. If the provisions of FIRPTA or similar state act apply to the transaction memorialized in this Agreement, and unless Seller is not a "foreign person" or an exemption applies, the Escrow Agent shall deduct and withhold from Seller's proceeds ten percent (10%) of the gross sales price and shall otherwise comply with all applicable provisions of FIRPTA and any similar state act. Seller and Purchaser agree to execute and deliver as directed by Escrow Agent any instrument, affidavit, and statement, including without limitation a

standard form of Non-Foreign Transferor Declaration, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar state act and regulation promulgated thereunder.

7.10 Tax Requirements. Escrow Agent shall prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

7.11 Transfer Taxes. No transfer tax shall be due because Purchaser is a public entity.

8. Conditions Precedent to Close of Escrow.

8.1. Purchaser's Conditions Prior to Closing. The obligation of the Purchaser to complete the purchase of the Property is subject to the satisfaction of the following conditions:

a. Seller shall deliver through Escrow an executed, acknowledged and recordable Grant Deed sufficient to convey fee title to the Purchaser as set forth in Section 5.1.

b. Seller shall deliver through Escrow a Non-Foreign Transferor Declaration duly executed.

c. Seller shall deliver through Escrow such other funds and documents as are necessary to comply with Seller's obligations under this Agreement.

d. Seller shall not be in default of any of its obligations under the terms of this Agreement, and all of Seller's representations and warranties made as of the date of this Agreement shall continue to be true and correct as of the close of Escrow.

e. Purchaser shall have approved the condition of title to the Property and Escrow Agent shall have committed to deliver to Purchaser a title insurance policy as required by Section 4 hereof.

f. Purchaser shall have approved the condition of the Property as provided in Section 9, below.

g. Seller shall be prepared to remove any and all ash that is stored onsite to grade level no later than 60 days following Closing.

On failure of any of the conditions set forth above, Purchaser may terminate its obligations under this Agreement with no further liability to Seller by giving notice to Seller on or before the expiration of the time allowed for each condition. In the event of such termination by the Purchaser, the Escrow Agent shall return the First Installment, if deposited, to Purchaser. Purchaser's failure to elect to terminate its obligations shall constitute a waiver of the condition by Purchaser.

8.2. Seller's Conditions Precedent to Closing. The obligation of Seller to complete the sale of the Property is subject to the satisfaction of the following conditions:

a. The Purchaser shall not be in default of any of its obligations under the terms of this Agreement, and all of Purchaser's representations and warranties made as of the date of this Agreement shall continue to be true and correct as of the close of Escrow.

b. The Purchaser shall have deposited with the Escrow Agent immediately available funds in an amount equal to the First Installment and the Purchaser's share of costs described herein.

On failure of any of the conditions set forth above, Seller may terminate its obligations under this Agreement with no further liability to Purchaser by giving notice to Purchaser on or before the expiration of the time allowed for each condition. Seller's failure to elect to terminate its obligations shall constitute a waiver of the condition by Seller.

9. Condition of Property. Within forty-five (45) days of Purchaser's execution of this Agreement, Purchaser at its expense may (but is not required to) perform such tests of the soils, groundwater and/or improvements on the Property as Purchaser shall deem appropriate (the "Tests") and approve the condition of the Property. If Purchaser disapproves the condition of the Property, this Agreement will terminate.

9.1 Permission to Enter on Premises. Seller hereby grants to Purchaser, or its authorized agents, permission to enter upon the Property at all reasonable times prior to close of Escrow for the purpose of making necessary or appropriate inspections.

9.2 Indemnification. Purchaser agrees to indemnify Seller and save it harmless from all damages, actions, causes of action, claims, judgments, costs of litigation, and attorney's fees which may in any way arise out of or result from the Tests. Purchaser further agrees to repair as nearly as reasonably can be accomplished any damages to the area covered by the Tests and will restore said area to as near its original condition as can be reasonably accomplished, in the event that the Purchaser does not acquire the Property from the Seller.

10. Tax Free Exchange. If Seller notifies the Purchaser prior to the Closing that Seller wishes to attempt to effectuate a "tax-free" exchange pursuant to Section 1031 of the Internal Revenue Code in connection with the transaction contemplated in this Agreement, the Purchaser shall cooperate with Seller, at no cost, expense, or liability to Purchaser, in the Seller's attempt to effectuate such exchange, but the Purchaser makes no representations to the Seller that any such exchange shall be treated as "tax-free" by the Internal Revenue Service. Seller agrees to indemnify Purchaser from all liability with respect to any action which the Seller requests the Purchaser to take pursuant to this Section 11, and to reimburse the Purchaser for all fees, costs, and expenses (including reasonable attorney's fees) incurred by the Purchaser as a result of the Seller's election to participate in a Section 1031 exchange. The Purchaser shall not be required to hold title to any real estate or other assets in order to cooperate with the Seller's Section 1031 exchange.

11. Closing Statement. Seller instructs Escrow Agent to release a copy of Seller's closing statement to Purchaser.

12. Loss or Damage to Property. Loss or damage to the Property, by fire or other casualty, occurring prior to the recordation of the Grant Deed, shall be at the risk of Seller. In the event that loss or damage to the Property, by fire or other casualty, occurs prior to the recordation of the Grant Deed, Purchaser may elect to require that the Seller pay to Purchaser

the proceeds of any insurance policy or policies which may become payable to Seller by reason thereof, or to permit such proceeds to be used for the restoration of the damage done, or to reduce the Purchase Price by an amount equal to the diminution in value of the Property by reason of such loss or damage or the amount of insurance payable to Seller, whichever is greater.

13. Possession and Disposition of Personal Property. Seller shall, prior to the close of Escrow, remove or otherwise dispose of all personal property located on the Property. All personal property remaining on the Property after the Closing shall become the property of Purchaser and Purchaser may dispose of same without liability as it alone sees fit, and Seller shall be liable for the costs of removal which are incurred by the Purchaser. Purchaser shall not be liable for any loss of or damage to the personal property remaining on the Property, regardless of when loss or damage occurs.

14. Warranties, Representations, and Covenants of Seller. Seller hereby warrants, represents, and/or covenants to Purchaser that:

14.1 Pending Claims. To the best of Seller's knowledge, there are no actions, suits, claims, legal proceedings, or any other proceedings affecting the Property or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign.

14.2 Encroachments. To the best of Seller's knowledge, there are no encroachments onto the Property by improvements on any adjoining property, nor do any buildings or improvements located on the Property encroach on other properties.

14.3 Condition of Property. The Property is in good condition, and until the close of Escrow, Seller shall maintain the Property in good condition and state of repair and maintenance and shall perform all of its obligations under any service contracts or other contracts affecting the Property.

14.4 Seller's Title. Until the close of Escrow, Seller shall not do anything which would impair Seller's title to any of the Property.

14.5 Utilities. All utilities including, without limitation, gas, electricity, water, sewage, and telephone, are available to the Property, and to the best of Seller's knowledge, all items are in good working order.

14.6 Conflict with Other Obligation. To the best of Seller's knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with, or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease, covenants, conditions and restrictions, or other agreement or instrument to which Seller or the Property may be bound.

14.7 Authority. Seller is the owner of and has the full right, power, and authority to sell, convey, and transfer the Property to Purchaser as provided herein and to carry out Seller's obligations hereunder. If Seller is a corporation, partnership, limited liability company or other similar entity, each party executing this Agreement on behalf of Seller represents and warrants that such person is duly and validly authorized to do so on behalf of Seller.

14.8 Bankruptcy. Neither Seller nor any related entity is the subject of a bankruptcy proceeding, and permission of a bankruptcy court is not necessary for Seller to be able to transfer the Property as provided herein.

14.9 Governmental Compliance. Seller has not received any notice from any governmental agency or authority alleging that the Property is currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation. If any such notice or notices are received by Seller following the date this Agreement is signed by Purchaser, Seller shall notify Purchaser within ten (10) days of receipt of such notice. Seller then, at its option, may either elect to perform the work or take the necessary corrective action prior to the close of Escrow or refuse to do so, in which case Seller shall notify Purchaser of such refusal and Purchaser shall be entitled to either close Escrow with knowledge of such notice(s) or terminate this Agreement.

14.10 Right to Possession. No person or entity other than Seller has the right to possess the Property or any portion of it, as of the date of this Agreement.

14.11 Non-Foreign Transferor. Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Act or any similar state statute, and Seller will comply with all of the requirements of the Foreign Investment in Real Property Act and any similar state statute in connection with this transaction.

14.12 Change of Situation. Until the close of Escrow, Seller shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 14 (14.1 through 14.11, inclusive) not to be true as of the close of Escrow, immediately give written notice of such fact or condition to Purchaser.

15. Hazardous Waste.

15.1 Hazardous Materials. As used in this Agreement, the term "Hazardous Materials" shall mean any substance, material, or waste which is or becomes, prior to the close of Escrow, regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material", "hazardous substance", or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos or asbestos containing materials, (vii) polychlorinated biphenyls, (viii) Methyl-tert-Butyl Ether, (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (x) designated as a "hazardous substances" pursuant to Section 311 of the Clean Water Act, (33 U.S.C. §1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, or (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.*

15.2 Compliance with Environmental Laws. Seller represents and warrants that to the best of Seller's knowledge, the Property and its present use complies with all applicable laws and governmental regulations including, without limitation, all applicable federal, state, and local laws pertaining to air and water quality, hazardous waste, waste disposal, and other environmental matters, including, but not limited to, the Clean Water, Clean Air, Federal Water Pollution Control, Solid Waste Disposal, Resource Conservation Recovery and Comprehensive Environmental Response Compensation and Liability Acts, and the California Environmental Quality Act, and the rules, regulations, and ordinances of the City of Calistoga, the California Department of Toxic Substances Control, the Regional Water Quality Control Board, the State Water Resources Control Board, the Environmental Protection Agency, and all applicable federal, state, and local agencies and bureaus.

15.3 Environmental Indemnification. Seller agrees to indemnify, defend and hold Purchaser harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, remediation expense, or other expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials prior to the close of Escrow on, under, in or about, the Property, or the transportation of any such Hazardous Materials to or from the Property, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials prior to the Closing on, under, in or about, to or from, the Property. This indemnity shall include, without limitation, any damage, liability, remediation expense, fine, penalty, parallel indemnity after closing, cost or expense arising from or out of any claim, action, suit or proceeding for personal injury, including sickness, disease or death, tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. This indemnity extends to liability arising from (a) acts or omissions to act occurring prior to or up to the date of Closing or (b) any condition existing upon the close of Escrow or which arises after the close of Escrow due to acts or omissions to act occurring on or prior to the close of Escrow, whether any such claim is asserted prior to or after the Closing. Seller shall not be responsible for damage, liability, fines, penalties or costs or expenses arising from acts or omissions occurring after the Closing.

16. Contingency. It is understood and agreed between the parties hereto that the completion of this transaction, and the Escrow created hereby, is contingent upon the specific acceptance and approval of this Agreement by the Purchaser. The execution of this Agreement by Purchaser and the delivery of same to Escrow Agent constitutes said acceptance and approval.

17. Full and Complete Settlement for Fee Interest. The total compensation to be paid by Purchaser to Seller is in consideration for all of Seller's interest in the Property and any rights or obligations which exist or may arise out of the acquisition of the Property for public purposes, including without limitation, Seller's fee interest in the land and any improvements and fixtures and equipment located thereon, improvements pertaining to the realty (if any), severance damages, relocation assistance, any alleged pre-condemnation or inverse condemnation damages, loss of business goodwill (if any), costs, interest, attorney's fees, and any claim whatsoever of Seller and Seller's Parties (defined below) which might arise out of or relate in any respect to the acquisition of the Property by the Purchaser.

Seller, on behalf of itself and all Seller's Parties, fully releases and discharges Purchaser from all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in law or equity, of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, which arise from or relate in any manner to (i) the sale of the Property or the relocation of Seller's Parties' business operations, if any, or the relocation of any person or persons, business or businesses, or other occupant or occupants located on the Property, including the specific waiver and release of any right to any relocation benefits, assistance and/or payments under California Government Code Section 7260, *et seq.*, notwithstanding that such relocation assistance, benefits and/or payments may be otherwise required under said sections or other state or federal law; and (ii) compensation for any interest in the Property or the business operations conducted thereon, including, but not limited to, land and improvements, fixtures, furniture, or equipment thereon, goodwill, severance damage, attorneys' fees or any other compensation of any nature whatsoever. The term "Seller's Parties" means Seller and Seller's affiliates, parent companies, subsidiaries, successors and assigns; and its and their officers, directors, partners, members, employees, agents and representatives.

It is hereby intended that the above release relates to both known and unknown claims that the Seller's Parties may have, or claim to have, against the Purchaser with respect to the subject matter contained herein or the events relating thereto. By releasing and forever discharging claims both known and unknown which are related to or which arise under or in connection with, the items set out above, the Seller expressly waives any rights under California Civil Code Section 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

18. Broker's Commission. Seller and Purchaser each warrants and represents that it has not engaged the services of any agent, finder or broker in connection with the transaction which is the subject of this Agreement, and that it is not liable for any real estate commissions, broker's fees or finder's fees which may accrue by means of the sale of the Property. Seller and Purchaser agree to and do hereby indemnify and hold the other harmless from and against any and all costs, liabilities, losses, damages, claims, causes of action or proceedings which may result from any broker, agent or finder, licensed or otherwise, which it has employed in connection with the transaction covered by this Agreement.

19. Waiver, Consent and Remedies. Each provision of this Agreement to be performed by Purchaser and Seller shall be deemed both a covenant and a condition and shall be a material consideration for Seller's and Purchaser's performance hereunder, as appropriate, and any breach thereof by Purchaser or Seller shall be deemed a material default hereunder. Either party may specifically and expressly waive in writing any portion of this Agreement or any breach thereof, but no such waiver shall constitute a further or continuing waiver of a preceding or succeeding breach of the same or any other provision. A waiving party may at any time thereafter require further compliance by the other party with any breach or provision so waived. The consent by one party to any act by the other for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure of a party to act, except as otherwise specified in this Agreement. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this

Agreement shall be cumulative and no one of them shall be exclusive of any other. Except as otherwise specified herein, either party hereto may pursue any one or more of its rights, options or remedies hereunder or may seek damages or specific performance in the event of the other party's breach hereunder or may pursue any other remedy at law or equity, whether or not stated in this Agreement.

20. Attorney's Fees. In the event any declaratory or other legal or equitable action is instituted between Seller, Purchaser and/or Escrow Agent in connection with this Agreement, then as between Purchaser and Seller, the prevailing party shall be entitled to recover from the losing party all of its costs and expenses, including court costs and reasonable attorneys' fees, and all fees, costs and expenses incurred on any appeal or in collection of any judgment.

21. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by facsimile, reputable overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received upon the earlier of: (i) if personally delivered, the date of delivery to the address of the person to receive such notice; (ii) if mailed, three (3) business days after the date of posting by the United States post office; (iii) if delivered by Federal Express or other overnight courier for next business day delivery, the next business day; or (iv) if sent by facsimile, with the original sent on the same day by overnight courier, the date on which the facsimile is received, provided it is before 5:00 P.M. Pacific Time. Notice of change of address shall be given by written notice in the manner described in this Section 21. Rejection or other refusal to accept or the inability to deliver because of a change in address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Unless changed in accordance herewith, the addresses for notices given pursuant to this Agreement shall be as follows:

If to Seller: Calistoga Spa, Inc. a California Corporation
 1006 Washington Street
 Calistoga, CA 94515
 Attention: Diane Barrett

If to Purchaser: City of Calistoga
 1232 Washington Street
 Calistoga, CA 94515
 Attention: Dylan Feik, City Manager

22. Default. Failure or delay by either party to perform any covenant, condition or provision of this Agreement within the time provided herein constitutes a default under this Agreement. The injured party shall give written notice of default to the party in default, specifying the default complained of. The defaulting party shall immediately commence to cure such default and shall diligently complete such cure within ten (10) days from the date of the notice. The injured party shall have the right to terminate this Agreement by written notice to the other party in the event of a default which is not cured within such ten (10) day period.

23. Entire Agreement. This Agreement and its exhibits constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements,

representations, negotiations and understanding of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

24. Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

25. Governing Law. This Agreement and the exhibits attached hereto have been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California without regard to its choice of law principles.

26. Invalidity of Provision. If any provision of this Agreement as applied to any party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

27. Amendments. No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing by Purchaser and Seller.

28. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

29. Time of Essence. Time is of the essence of each provision of this Agreement.

30. Binding Upon Successors. The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereof.

31. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

32. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

33. Cooperation. Each party agrees to cooperate with the other in the Closing of this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement.

CONSENT OF ESCROW AGENT

Escrow Agent hereby acknowledges receipt of three (3) counterparts of this Agreement, each of which has been executed by the parties. Escrow Agent hereby agrees (i) to be and serve as Escrow Agent pursuant to this Agreement; and (ii) subject to further escrow instructions mutually agreeable to the parties and Escrow Agent, to be bound by the Agreement in the performance of its duties as Escrow Agent and to hold and disburse all funds received by Escrow Agent in accordance with the provisions of this Agreement; provided, however, Escrow Agent shall have no obligation, liability, or responsibility under any amendment to the Agreement unless and until the same is accepted by Escrow Agent in writing. Escrow Agent further agrees to immediately deliver to each of Seller and Purchaser's counsel one (1) original counterpart of this Agreement executed by the parties and Escrow Agent. Escrow Agent has assigned this Agreement file number _____.


By: _____

Its: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below.

PURCHASER:

CITY OF CALISTOGA, a California
municipal corporation

Date: 4/18/18 By: 
Dylan Feik, City Manager


APPROVED AS TO FORM:

By:  Date: 5-4-18
Michelle Kenyon, City Attorney

ATTEST:

By:  Date: 4/23/18
Kathy Flansburg, City Clerk

SELLER:

Date: 4/18/18 By: 
Name Diane Barrett
Title: SEC/ITR
[signature must be notarized]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Napa)

On April 18, 2018 before me, Melissa A. Velasquez, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared Diane Kathleen Barrett
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document Agreement for Purchase & Sale of Real Property

Title or Type of Document: _____ Document Date: N/A

Number of Pages: 13 Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: Diane Kathleen Barret

☒ Corporate Officer — Title(s): Sec. of Treasury

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: Calistoga Spa, Inc.

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

CAL FORM 100 ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Napa)

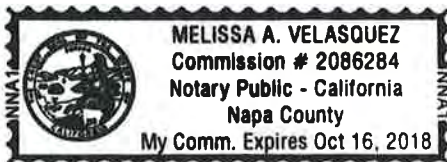
On April 18, 2018 before me, Melissa A. Velasquez, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Dylan Feik
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document Agreement for Purchase & Sale of Real Property
Title or Type of Document: _____ Document Date: N/A
Number of Pages: 13 Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: Dylan Feik
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☒ Other: City Manager
Signer Is Representing: City of Calistoga

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

CONSULTANT SERVICES AGREEMENT

Agreement No. 768

Related to Inundation Maps and Emergency Action Plan for Kimball Reservoir

THIS AGREEMENT is entered into as of the 15th day of May, 2018, by and between the CITY OF CALISTOGA, herein called the "City," and MBK Engineers, herein called the "Consultant."

Recitals

WHEREAS, City desires to obtain professional services in connection with the preparation of new Inundation Maps and Updated Emergency Action Plan for Kimball Reservoir Dam pursuant to Sections 6160 and 6161 of the Water Code as amended by Senate Bill 92 which became effective June 27, 2017; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. City. The City Manager or his/her designee, shall represent City for all purposes under this Agreement. The City Manager or designee is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant shall assign Ben Tustison, P.E. to have overall responsibility for the progress and execution of this Agreement for Consultant.

3. Scope and Performance of Services.

A. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence no sooner than March 21, 2018 and be completed not later than January 1, 2019. Consultant shall perform its services in accordance with the schedule attached hereto as Exhibit A, and incorporated herein by reference. Any changes to these dates in either this Section 3 or Exhibit A must be approved in writing by the Project Manager.

C. Standard of Quality. City relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit A, and incorporated herein by reference. However, in no event shall the amount City pays Consultant exceed Seventy-Nine Thousand Five-Hundred Dollars (\$79,500). Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

B. Timing of Payment.

Consultant shall submit itemized monthly statements for work performed. City shall make payment, in full, within thirty (30) days after approval of the invoice by the Project Manager.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

D. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

E. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate

Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by City and not part of the litigation brought by City against Consultant.

5. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the City. Failure of the Consultant to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate City authorization.

6. Term. This Agreement shall commence upon its execution and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish City with every reasonable opportunity for City to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to City without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement, unless required by law.

9. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists, or experts for services in connection with this Agreement without the prior written approval of the City.

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City. Consultant agrees to at all times avoid conflicts of interest, or the

appearance of any conflicts of interest, with the interests of the City in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. Consultant hereby agrees to defend, indemnify and hold harmless the City, its officers, agents, employees, volunteers, and servants from and against any and all claims, demands, damages, costs, liabilities, or obligations for bodily injury, death and property damage only to the extent that such claims are caused by the negligence, recklessness or willful misconduct of the Consultant, its officers, employees, agents and subcontractors on account of or arising from Consultant's performance of services. For liability arising out of the performance of professional services, the Consultant shall indemnify, hold harmless, and defend the City, its officers, agents, employees, volunteers, and servants from and against any and all claims, demands, damages, costs, liabilities, or obligations to the extent such claims are caused by the negligent, reckless, or intentional acts or omissions of the Consultant, its officers, employees, agents and subcontractors in the performance of professional services under this Agreement. Notwithstanding any contrary provision herein, it is hereby agreed that the Consultant's obligation to defend or to pay the defense costs of the City arising out of the performance of professional services shall only apply if and when, and to the extent that the parties agree on, or a court or other forum of competent jurisdiction has determined, the percentage of Consultant's fault for the liability alleged, in which case Consultant shall be obligated to pay the amount equal to the percentage of its fault that has been actually determined.

13. Consultant Not an Agent of City. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

14. Independent Contractor. It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

15. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Consultant represents and warrants to City that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City business license. The City is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's subconsultants (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's Public Works Department office.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. City Not Responsible. City is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against City, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under Consultant's workers' compensation insurance policy which arise from the work performed by Consultant for the City.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the City, or as required by law.

17. Assignment; Subcontractors; Employees.

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the City's prior written consent. Any assignment without such approval shall be void and, at the City's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder. No subcontractor of Consultant shall be recognized by the City as such; rather, all subcontractors are deemed to be employees of the Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

18. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of this Agreement, a General Liability insurance policy insuring it and its firm to an amount not less than \$2,000,000 (Two Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Consultant agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than \$1,000,000 (One Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide required coverage for Employers' Liability (Coverage B).

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its officials, officers, agents, employees, and volunteers are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to City all certificates of insurance with original endorsements effecting coverage required by this paragraph. Certificates of such insurance shall be filed with City on or before commencement of performance of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, officers, agents, employees, and volunteers.

(8) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30-days' prior written notice by certified mail, return receipt requested, has been given to City. Current certification of such insurance shall be kept on file with the City Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Consultant shall furnish the City with original Certificate(s) of Insurance verifying Consultant's receipt of the insurance coverage required herein.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City or Consultant upon 5-days' written notice to Consultant/ City.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee; provided, however, that the City shall deduct from such amount the amount of damages, if any, sustained by City by virtue of the breach of the Agreement by consultant.

C. In the event this Agreement is terminated by City without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the City. Consultant, however, shall not be liable for the City's use of incomplete materials nor for the City's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.

21. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the City and Consultant and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the City and Consultant. All provisions of this Agreement are expressly made conditions.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

24. Time of the Essence. Time is of the essence of this Agreement.

25. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 72 hours from the time of mailing if mailed as provided in this section.

If to City: City Clerk
City of Calistoga
1232 Washington Street.
Calistoga, CA 94515

If to Consultant: Ben Tustison, P.E.
MBK Engineers
455 University Avenue, Suite 100
Sacramento, CA 95825

26. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City and all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

C. The City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in the City Manager's office.

27. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

28. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national

origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29. City Not Obligated to Third Parties. The City shall not be obligated or liable for payment hereunder to any party other than the Consultant.

30. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

31. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

32. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

A. Exhibit A: Scope of Work, Schedule of Performance, Compensation

33. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

34. News Releases/Interviews. All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

35. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

36. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.


IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: 
Dylan Feik, City Manager

Date: 5/16/18

CONSULTANT

By: 
Ben Tustison, P.E. for MBK Engineers

Date: 5/24/18

ATTEST:
Kathy Flamson

By: 
City Clerk

EXHIBIT A

Scope of Work, Schedule of Performance, Compensation



Water Resources • Flood Control • Water Rights

GILBERT COSIO, JR., P.E.
MARC VAN CAMP, P.E.
WALTER BOURZ, III, P.E.
RIC REINHARDT, P.E.
GARY KIENLEN, P.E.
DON TRIEU, P.E.
DARREN CORDOVA, P.E.
NATHAN HERSHEY, P.E., P.L.S.
LEE G. BERGFELD, P.E.
BEN TUSTISON, P.E.

ANGUS NORMAN MURRAY
1913-1985

CONSULTANTS:
JOSEPH I. BURNS, P.E.
DONALD E. KIENLEN, P.E.

March 8, 2018

Derek Rayner, P.E.
City of Calistoga
414 Washington Street
Calistoga, CA 94515

**Subject: Scope of Work for Kimball Dam
Inundation Maps and Emergency Action Plan**

Dear Mr. Rayner:

The following Scope of Work (SOW) supports a contract for MBK Engineers (MBK) to provide services to the City of Calistoga (City) for provision of an Emergency Action Plan (EAP) for a potential dam failure of Kimball Dam. This SOW includes the development of the hydraulic model, technical analysis, and the mapping required by the Division of Safety of Dams (DSOD) as part of that process. The inundation maps will become part of the EAP, and the EAP will be submitted to the California Governor's Office of Emergency Services (CalOES) for review. The process we are proposing to assist the City with is required for Kimball Dam by the State of California and is depicted in Attachment 1.

The task list in Attachment 2 outlines the actions associated with developing the inundation maps and EAP:

- Task 1a - Compile Data
- Task 1b - Hydraulic Model Development and Analysis
- Task 1c - Inundation Mapping Documentation
- Task 1d - Coordination with the DSOD
- Task 2a - EAP Development
- Task 2b - EAP Outreach and Training (optional)

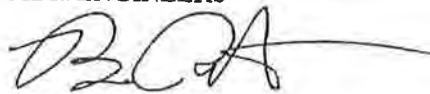
The State is requiring the Kimball Dam EAP to be submitted no later than January 1, 2019, and we will work to meet that schedule. Since review and subsequent acceptance of the inundation maps by DSOD is required prior submitting the EAP to CalOES, we will work to complete the inundation mapping in advance of the January 1, 2019 deadline, such that DSOD has a reasonable amount of review time. There is a possibility that DSOD will take longer than expected to review, which could potentially cause difficulty in submitting the EAP by the deadline. When this has occurred with other clients, DSOD has acknowledged this delay and communicated with CalOES so that the EAP deadline can be relaxed, or CalOES has allowed a draft EAP to be submitted without the final maps prior to the January 1 deadline. We will communicate with these agencies to make sure we understand and can meet their expectations regarding the submittal deadline.

MBK efforts are charged on an actual time-and-expense basis, in accordance with our current fee schedule, included as Attachment 3. We estimate the tasks identified can be completed at a cost not to exceed \$79,500, including the optional EAP coordination task define in this SOW. In reading the State regulations, we do not believe the City would be required to perform the outreach described in the optional EAP coordination task. However, this task is performed for many dams throughout the region, and we believe this task adds value to the work outlined herein and would provide a public safety benefit to the people of Calistoga.

We appreciate the opportunity to provide this SOW and assist the City of Calistoga in this essential dam safety endeavor.

Please do not hesitate to contact me if you have any questions.

Sincerely,
MBK ENGINEERS

A handwritten signature in black ink, appearing to read 'B. Tustison', with a long horizontal stroke extending to the right.

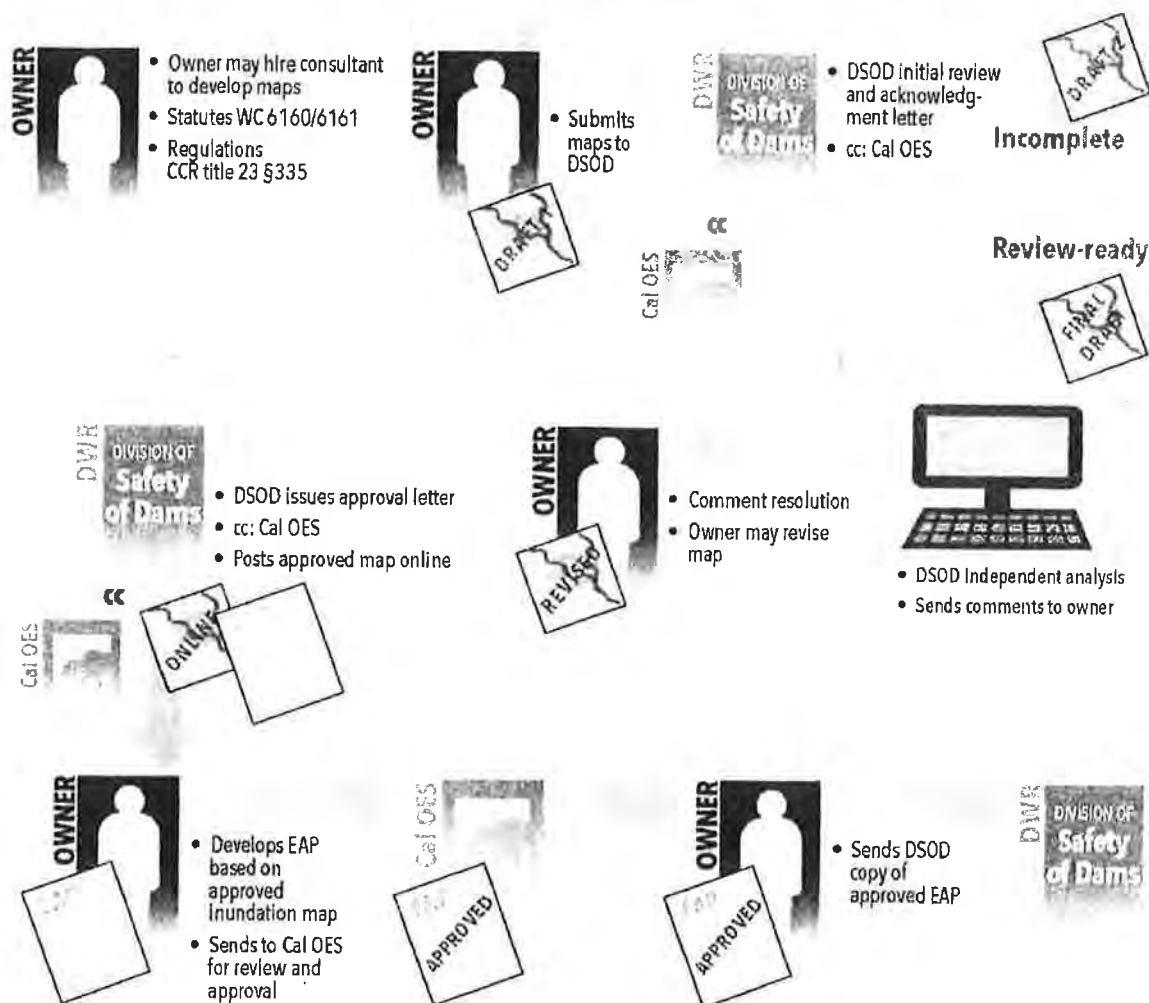
Ben Tustison, P.E.

NL/bt
8888.12/KIMBALL DAM 2018-03-08

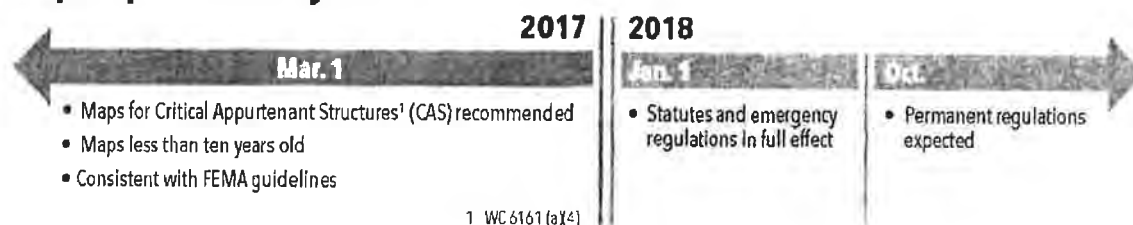
Attachments

Inundation Map Review Process

Owners of dams, other than low hazard dams, are subject to the new statutes and regulations requiring inundation maps for dams and their critical appurtenant structures. DSOD reviews and approves inundation maps, and Cal-OES reviews and approves EAPs that are based on approved inundation maps. Owners must update inundation maps at a minimum of every 10 years, anytime there is a change to the dam, and anytime there is a change in downstream development.



Map Requirements by Date



Acronyms

DWR: California Department of Water Resources; DSOD: Division of Safety of Dams; Cal-OES: Governor's Office of Emergency Services; WC: Water Code; EAP: Emergency Action Plan; FEMA: Federal Emergency Management Agency

Scope of Work

Inundation Maps and Emergency Action Plan for Kimball Dam

Task 1: Inundation Maps

Task 1a: Compile Data

The data necessary to develop the dam breach models and related inundation maps will be compiled during this task. The major data necessary are (1) topography of the area, (2) as-built plans for the Kimball Dam, and (3) storage-area-volume relationships for the reservoir. It is anticipated that LiDAR data from Napa County is available and will be used for development of the hydraulic model and inundation mapping. This task assumes field surveys will not be necessary.

Task 1b: Hydraulic Model Development and Analysis

A hydraulic model of Kimball Dam/Reservoir and the anticipated flow path downstream will be developed using the United States Army Corps of Engineers (USACE) computer program HEC-RAS. Topography from Task 1a will be the basis of the hydraulic model. A 2-dimensional hydraulic model will be developed which has the ability to spatially calculate water surface elevation, depths, velocity, flow rates, and flood wave arrival times.

The inundation maps and hydraulic analysis will be prepared for Kimball Dam in accordance with the newly adopted sections of the California Code of Regulations, Title 23, Division 2, Chapter 1, Article 6 (Code). A meeting with the State of California Department of Water Resources (DWR) will determine if any special circumstances or breach parameters are recommended for this dam. If DWR does not provide guidance for dam break parameters, then guidance provided in FEMA's *Federal Guidelines for Inundation Mapping of Flood Risks Associated with Dam Incidents and Failures* (FEMA P-946, 2013), will be used.

Absent guidance by DWR, a Sunny Day Failure analysis scenario will be assumed. The breach parameters will be configured in HEC-RAS and a sensitivity analysis performed on some parameters to determine if they alter the resulting breach hydrograph.

Once the breach hydrograph is determined, it will be routed downstream in the hydraulic model. The downstream extent of the model will be sufficient to where flood depths are on the order of 1 foot or less. A field visit will be required to review the dam, reservoir, and downstream terrain. This visit will determine if any hydraulic constraints exist that may not be reflected in the topography, so the hydraulic model and inundation maps can be adjusted accordingly.

Task 1c: Inundation Mapping and Documentation

The resulting inundation from the HEC-RAS model will be mapped per the DSOD mapping standards. The HEC-RAS results will be used in the Arc Map computer program, overlaid with existing aerial photos to depict the inundation and provide downstream cross-sections containing: distance from dam, flood-wave arrival time, flood-wave maximum elevation, and peak flow. A technical memorandum will be produced that documents the background, analysis, assumptions, and methodology used to produce the inundation maps. The memorandum will satisfy the newly adopted Code's requirement that documentation be submitted with inundation maps.

Task 1d: Coordination with DSOD

This task includes coordinating with the appropriate DSOD representative throughout the review process to obtain approved inundation maps. Based on previous experience, it is anticipated that DSOD will provide comments on the inundation maps after their initial review.

Task 2: Emergency Action Plan**Task 2a: EAP Development**

This task includes development of the EAP for Kimball Dam based on the CalOES template and coordination with City staff and local emergency responders to develop a planholders list. This task assumes the City will provide one round of comments on the Administrative Draft. A Draft EAP will then be prepared for CalOES after the dam inundation mapping has been accepted by DSOD. Comments from CalOES on the Draft EAP will be incorporated into the Final EAP submitted to CalOES. This task does not include the costs associated with printing and distribution of the EAP.

Task 2b: EAP Outreach and Training

As the first EAP for Kimball Dam, it would be beneficial to familiarize dam operators, City staff and emergency responders on the EAP and the City's role in its implementation and communication of protocols. This task includes the facilitation of internal training on the EAP and facilitating an outreach meeting with emergency responders and plan holders

Table 1. Task List for Kimball Dam

Task 1a – Compile Data	\$10,000
Acquire topography, as-built plans, and storage-area-volume data	
Acquire Napa County LiDAR data	
Coordinate with DWR	
Task 1b – Hydraulic Model Development and Analysis	\$31,500
Perform field visit	
Configure of dam break and breach parameters in HEC-RAS	
Route hydrographs	
Perform sensitivity Analysis	
Task 1c – Inundation Mapping Documentation	\$20,000
Perform simulation result mapping	
Overlay aerial imagery on inundation map	
Develop memorandum	
Task 1d – DSOD Coordination	\$4,000
Task 2a – Kimball Dam EAP Development	\$10,000
Administrative draft for City of Calistoga review	
Develop and Submit Final EAP to CalOES	
Final EAP for distribution to planholders	
Task 2b – EAP Outreach and Training <i>OPTIONAL</i>	\$4,000
Facilitate internal training	
Facilitate outreach with responders/planholders	
TOTAL - Required Tasks	\$75,500
TOTAL - Optional Tasks	\$4,000
TOTAL - All tasks	\$79,500

SCHEDULE OF FEES

1. Standard Fees:

	<u>Per Hour</u>
Principal	\$200-260
Supervising Engineer	170-230
Senior Project Manager	180-230
Project Manager	160-200
Senior Engineer	140-210
Engineer/Hydrologist	120-180
GIS Professional	120-180
Water Resources Associate	100-160
Assistant Engineer	100-150
Prevailing Rate Surveyor, Chief of Party	163
Prevailing Rate Surveyor, Rodman/Chainman	148
GIS Specialist	80-140
Technician/Drafter	80-140
Junior Engineer	75-110
Engineering Aide	50-80
Technical Editor	50-125
3-Man Survey Crew	270
2-Man Survey Crew	235

2. Time spent in appearances at courts or quasi-judicial State or Federal boards and commissions is billed at \$450 per hour for principals and supervising engineers, \$400 per hour for registered engineer staff, and \$250 per hour for other staff.
3. Automobile mileage is billed at the Federal reimbursement rate. Local mileage (less than 20 miles) will not be billed.
4. All other direct non-salary expense, including transportation and subsistence, long-distance telephone charges, commercial printing, reproduction costs, and similar out-of-pocket expenses are billed at actual cost plus a service charge of 10%. Use of GPS equipment is billed at \$50 per hour. Use of MBK owned boat will be billed at \$100/day. Use of MBK owned drones will be billed at \$125/day. Professional services provided by others billed through MBK at cost plus a service charge of 5%-15%.
5. Billings will be made monthly and payment will be due within 45 days. Accounts not paid within 90 days of presentation will bear interest at the rate of 1½% per month or fraction thereof from the billing date unless other arrangements are made in advance.
6. If accounts are not paid within 90 days of presentation, the firm may retain an attorney to obtain payment. In the event that it does so and payment of all or part of the account is thereafter obtained, reasonable attorney's fees and other costs incurred to obtain such payment shall also be paid, or if payment is obtained by Judgment, shall be awarded as part of the Judgment.

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791



November 2, 2017

NOTICE TO OWNERS OF STATE JURISDICTIONAL DAMS

Subject: Emergency Regulations for Dam Inundation Maps

Senate Bill 92 added Sections 6160 and 6161 to the Water Code that became effective on June 27, 2017, requiring owners of State regulated dams, except those classified as low hazard, to prepare emergency action plans (EAPs) containing inundation maps for emergency preparedness. On October 19, 2017, emergency regulations were adopted to provide standards for preparing and submitting inundation maps to this Division for our review and approval. These regulations are available at http://www.water.ca.gov/damsafety/statutes_regulations/index.cfm.

Owners must submit EAPs to the Governor's Office of Emergency Services (Cal OES) for approval by deadlines that are based on the dam's downstream hazard classification. Owners received letters in July identifying their dam's hazard classification and the statutory deadlines for submitting EAPs as shown below:

- Extremely high hazard dams: January 1, 2018
- High hazard dams: January 1, 2019
- Significant hazard dams: January 1, 2021

It is important to note that inundation maps must first be submitted to this Division for review and approval, and only approved inundation maps should be contained within EAPs that are submitted to Cal OES for their approval. For more information on the Cal OES EAP program, please visit <http://www.caloes.ca.gov>.

Upon approval of the EAP by Cal OES, owners are responsible for ensuring that the approved EAP is disseminated to appropriate public safety and emergency management agencies, which includes our Division. Thank you for your cooperation.

If you have any questions or need additional information, please contact Kristen Martin at (916) 227-2170 or MapRegs@water.ca.gov.

CITY OF CALISTOGA

1232 Washington Street • Calistoga, CA 94515
Telephone 707-942-2828 – Public Works Dept.
Fax 707-942-9472
www.ci.calistoga.ca.us



February 20, 2019

Mr. Ben Tustison, P.E.
MBK Engineers
455 University Avenue, Suite 100
Sacramento, CA 95825

RE: Consultant Services Agreement No. 768 – Inundation Maps & Emergency Action Plan for Kimball Reservoir – Performance of Services Extension

Dear Mr. Tustison:

We have received your request to extend the above-mentioned agreement to December 31, 2019 to allow MBK Engineers to continue to assist the City with the Inundation Maps and Emergency Action Plan for the Kimball Reservoir.

The City acknowledges that CalOES may require additional information or have questions during their review of the recent submittal. Therefore, the City authorizes an extension of the agreement to December 31, 2019.

Sincerely,

A handwritten signature in blue ink that reads "Michael Kirn".

Michael Kirn
Public Works Director

c: Derek Rayner, Deputy Public Works Director
File

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is entered into as of the 16th day of May, 2018, by and between the CITY OF CALISTOGA, herein called the "City," and TELSTAR INSTRUMENTS, herein called the "Consultant."

Recitals

WHEREAS, City desires to obtain maintenance services in connection with electrical control systems, SCADA, PLC, Telemetry and calibration at the Kimball Water Treatment Plant, Dunaweal Wastewater Treatment Plant, Pope Street Pump Station and the Sewer Lift Stations; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. City. The City Manager or his/her designee, shall represent City for all purposes under this Agreement. The City Manager or designee is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant shall assign Tak Koo or Ben Herston to have overall responsibility for the progress and Tammy Misenhimer, Contract Administrator, will have overall responsibility for execution of this Agreement for Consultant.

3. Scope and Performance of Services.

A. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services as directed by City Staff.

B. Time of Performance. The services of Consultant are to commence no sooner than May 15, 2018 and be completed not later than June 30, 2021. Consultant shall

perform its services in accordance with Purchase Order or Task Order Requests issued by the City of Calistoga for individual projects or issues. Any changes to these dates must be approved by the Public Works Director.

C. Standard of Quality. City relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules noted in the Purchase Order or Task Order, and incorporated herein by reference. However, in no event shall the amount City pays Consultant exceed Forty Thousand Dollars (\$40,000), without written authorization from the City, per fiscal year beginning July 1, 2018 and ending June 30, 2021. Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

B. Timing of Payment.

Consultant shall submit itemized invoices for work performed under each Purchase Order. City shall make payment, in full, within thirty (30) days after approval of the invoice by the City.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

D. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

E. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate

Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by City and not part of the litigation brought by City against Consultant.

5. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the City. Failure of the Consultant to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate City authorization.

6. Term. This Agreement shall commence upon execution and shall continue in full force and effect until June 30, 2021, or as amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish City with every reasonable opportunity for City to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to City without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement, unless required by law.

9. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists, or experts for services in connection with this Agreement without the prior written approval of the City.

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City. Consultant agrees to at all times avoid conflicts of interest, or the

appearance of any conflicts of interest, with the interests of the City in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. Consultant hereby agrees to defend, indemnify and hold harmless the City, its officers, agents, employees, volunteers, and servants from and against any and all claims, demands, damages, costs, liabilities, or obligations for bodily injury, death and property damage only to the extent that such claims are caused by the negligence, recklessness or willful misconduct of the Consultant, its officers, employees, agents and subcontractors on account of or arising from Consultant's performance of services. For liability arising out of the performance of professional services, the Consultant shall indemnify, hold harmless, and defend the City, its officers, agents, employees, volunteers, and servants from and against any and all claims, demands, damages, costs, liabilities, or obligations to the extent such claims are caused by the negligent, reckless, or intentional acts or omissions of the Consultant, its officers, employees, agents and subcontractors in the performance of professional services under this Agreement. Notwithstanding any contrary provision herein, it is hereby agreed that the Consultant's obligation to defend or to pay the defense costs of the City arising out of the performance of professional services shall only apply if and when, and to the extent that the parties agree on, or a court or other forum of competent jurisdiction has determined, the percentage of Consultant's fault for the liability alleged, in which case Consultant shall be obligated to pay the amount equal to the percentage of its fault that has been actually determined.

This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Consultant under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Consultant and shall continue to bind the parties after termination/completion of this agreement.

13. Consultant Not an Agent of City. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

14. Independent Contractor. It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

15. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Consultant represents and warrants to City that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City business license. The City is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's subconsultants (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's Public Works Department office.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. City Not Responsible. City is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against City, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under Consultant's workers' compensation insurance policy which arise from the work performed by Consultant for the City.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the City, or as required by law.

17. Assignment; Subcontractors; Employees.

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the City's prior written consent. Any assignment without such approval shall be void and, at the City's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder. No subcontractor of Consultant shall be recognized by the City as such; rather, all subcontractors are deemed to be employees of the Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

18. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of this Agreement, a General Liability insurance policy insuring it and its firm to an amount not less than \$2,000,000 (Two Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Consultant agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide required coverage for Employers' Liability (Coverage B).

(4) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its officials, officers, agents, employees, and volunteers are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(5) Consultant shall provide to City all certificates of insurance with original endorsements effecting coverage required by this paragraph. Certificates of such insurance shall be filed with City on or before commencement of performance of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies at any time.

(6) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, officers, agents, employees, and volunteers.

(7) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30-days' prior written notice by certified mail, return receipt requested, has been given to City. Current certification of such insurance shall be kept on file with the City Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Consultant shall furnish the City with original Certificate(s) of Insurance verifying Consultant's receipt of the insurance coverage required herein.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon 5-days' written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee; provided, however, that the City shall deduct from such amount the amount of damages, if any, sustained by City by virtue of the breach of the Agreement by consultant.

C. In the event this Agreement is terminated by City without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the City. Consultant, however, shall not be liable for the City's use of incomplete materials nor for the City's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.

21. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the City and Consultant and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the City and Consultant. All provisions of this Agreement are expressly made conditions.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

24. Time of the Essence. Time is of the essence of this Agreement.

25. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 72 hours from the time of mailing if mailed as provided in this section.

If to City: City Clerk
City of Calistoga
1232 Washington Street.
Calistoga, CA 94515

If to Consultant: Tak Koo
Telstar Instruments
1717 Solano Way, Unit 34
Concord, CA 94520

26. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City and all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

C. The City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in the City Manager's office.

27. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

28. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national

origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29. City Not Obligated to Third Parties. The City shall not be obligated or liable for payment hereunder to any party other than the Consultant.

30. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

31. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

32. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

33. News Releases/Interviews. All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

34. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

35. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

///

///

///

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: _____

Dylan Feik, City Manager

Date: 5/16/18

TELSTAR INSTRUMENTS

By: _____

Tammy Misenhimer

Title: Contracts Administrator

Date: MAY 8, 2018

ATTEST:

By: _____

Kathy Flamson, City Clerk

Exhibit "A"**NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT****WATER PURCHASE ORDER NO. 2018-C01**

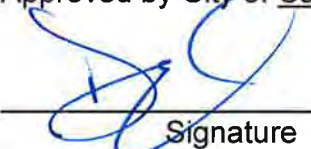
In accordance with Agreement No. 1926, Amendment No. 11, Agency agrees to execute the exchange of supplemental water for the City of Calistoga on the following terms:

TERMS:	
Water Source	City of Calistoga Table A
Quantity	400 Acre-Feet
Raw Water Rate (per acre-foot)	\$200.00

CHARGES:	
Initial Program Deposit (refundable)	N/A
Initial Option Acquisition Price	N/A
District Administrative Costs	N/A
Raw Water Costs	\$80,000.00
Other:	N/A
Total Cost per Acre-Foot:	\$200.00
Total Amount Due:	\$80,000.00

Notes:

Approved by City of Calistoga (SELLER)



 Signature

 City Manager
 Title

5/16/18

 Date

Exhibit "A"

NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

WATER PURCHASE ORDER NO. 2016-C01

Approved by Napa County Flood Control and Water Conservation District



Signature

5/31/18

Date

District Engineer
Title

REQUESTED DELIVERY SCHEDULE*	MONTH	AMOUNT
* Agency will not be liable to City for any inability to provide the full amount of water requested or to meet the requested delivery dates.	N/A	N/A

PROFESSIONAL SERVICES AGREEMENT
Environmental Review Services for the Calistoga Hills Modifications Project
Authorizing Agreement No. 771

THIS AGREEMENT is entered into as of the 7th day of June, 2018 by and between the City of Calistoga, herein called the "City," and FirstCarbon Solutions (FCS), herein called the "Consultant."

Recitals

WHEREAS, City desires to obtain environmental review services in connection with the Calistoga Hills Modifications Project; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by reference.
2. Time of Performance. The work described in Exhibit "A" are to be completed by the Consultant not later than four (4) months from the effective date of this agreement. Any changes to these dates must be approved in writing by the Planning & Building Director or their designee.
3. Compensation and Method of Payment.
 - A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit "A." In no event shall the amount exceed Sixty-Five Thousand Seven Hundred Dollars (\$65,700.00) without approval in writing by the Planning & Building Director or their designee.

Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.
 - B. Timing of Payment. Billing for said services may be made on a monthly basis. City shall review Consultant's statement and pay Consultant for services rendered within 30 days of receipt of the Consultant's statement.
 - D. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's report. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates.

4. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents in the course of implementing this Agreement, except working notes and internal documents, shall become the sole property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its sole discretion without further compensation to Consultant or to any other party. Any modifications made by the City to any of the Consultant's documents or any partial use or reuse of the documents without the express written consent of the Consultant will be at the City's sole risk and without liability to the Consultant and the City shall indemnify, defend, and hold harmless from all claims, damages, losses and expenses including, but not limited to, attorney's fees resulting therefrom.
5. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists or experts for services, except as otherwise included in the Scope of Work, without the prior written approval of the City.
6. Interest of Consultant.
 - A. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

 - (1) will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and
 - (2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)
7. Interest of Members and Employees of City. No member of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his/her personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.
8. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or

otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

9. Indemnification of City. Consultant hereby agrees to defend, indemnify and save harmless the City, its officers, agents, employees and servants, from and against any and all claims, liability or obligations based on negligence or willful misconduct brought on account of or arising out of any acts, errors or omissions of Consultant undertaken pursuant to this Agreement. The City has no liability or responsibility for any accident, loss or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.
10. Consultant Not an Agent of City. City retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.
11. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.
12. Compliance with Laws.
 - A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City of Calistoga business license.
 - B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of this Agreement.
 - C. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7.

- D. City Not Responsible. The City is not responsible or liable for Consultant's failure to comply with any and all of said requirements.
13. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by City, or as required by law.
14. Insurance.
- A. Minimum Scope of Insurance.
- (1) Consultant agrees to have and maintain, for the duration of the contract, a General Liability insurance policy insuring him/her and his/her firm to an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage.
 - (2) Consultant agrees to have and maintain for the duration of the contract an Automobile Liability insurance policy insuring him/her and his/her staff to an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident for bodily injury and property damage.
 - (3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or sub-consultants. The amount of this insurance shall not be less than One Million Dollars (\$1,000,000.00) on a claims-made annual aggregate basis.
 - (4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:
 - (a) This policy shall provide coverage for Workers' Compensation (Coverage A).
 - (b) This policy shall also provide coverage for One Million Dollars (\$1,000,000.00) Employers' Liability (Coverage B).
 - (c) Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officials, officers, employees, volunteers, and agents.
 - (5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:
 - (a) "The City of Calistoga, its employees, officers, agents and contractors are hereby added as additional insureds, but only as respects work done by, for on behalf of the named insured."

- (b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."
 - (c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."
 - (6) Consultant shall provide to the City all certificates of insurance with original endorsements affecting coverage required by this paragraph. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
 - B. General Liability.
 - (1) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
 - (2) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - C. All Coverages. Each insurance policy required in this item shall provide that coverage shall not be canceled, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the City. Current certification of such insurance shall be kept on file with the City Secretary at all times during the term of this Agreement.
 - D. Acceptability of Insurers. Insurance is to be placed with insurers approved by the California Department of Insurance with a Best's rating of no less than A:VII.
 - E. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
15. Assignment Prohibited. Neither the City nor Consultant may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.
16. Termination of Agreement.
- A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon written notice to the Consultant upon 5 days' written notice. Consultant may terminate this Agreement upon 30 days' written notice.

- B. If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.
 - C. Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the City, become its sole property and shall, at Consultant's expense, be delivered to the City or to any party it may so designate.
 - D. In the event termination is without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that Consultant shall be entitled to compensation for work in progress at the time of termination.
17. Amendment. This Agreement constitutes the complete and exclusive statement of the Agreement to City and Consultant. It may be amended or extended from time to time by written agreement of the parties hereto.
18. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.
19. Time of the Essence. Time is of the essence of this Agreement, however, the Consultant shall not be held responsible for delays caused by acts outside of Consultant's control.
20. Written Notification. Any notice, demand, request, consent, approval or communications that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City Of Calistoga
City Manager
1232 Washington Street
Calistoga, CA 94515

If to Consultant: First Carbon Solutions
1350 Treat Boulevard, Suite 380
Walnut Creek, CA 94597

21. Consultant's Books and Records.

- A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.
- B. Consultant shall maintain all documents and records, which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.
- D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

22. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of

pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

23. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.
24. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
25. News Releases/Interviews: All Consultant and sub-consultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.
26. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: _____

Dylan Feik, City Manager

FIRSTCARBON SOLUTIONS

By: _____

Jason Brandman, Vice-President

ATTEST

Kathy Flamson
Kathy Flamson, City Clerk

MAINTENANCE AGREEMENT

This Maintenance Agreement (this "Agreement") is made and entered into this sixteenth day of June, 2017, by Enterprise Fleet Management, Inc., a Missouri corporation ("EFM"), and City of Calistoga ("Lessee").

WITNESSETH

- 1. LEASE.** Reference is hereby made to that certain Master Equity Lease Agreement dated as of the sixteenth day of June, 2017, by and between Enterprise FM Trust, a Delaware statutory trust, as lessor ("Lessor"), and Lessee, as lessee (as the same may from time to time be amended, modified, extended, renewed, supplemented or restated, the "Lease"). All capitalized terms used and not otherwise defined in this Agreement shall have the respective meanings ascribed to them in the Lease.
- 2. COVERED VEHICLES.** This Agreement shall only apply to those vehicles leased by Lessor to Lessee pursuant to the Lease to the extent Section 4 of the Schedule for such vehicle includes a charge for maintenance (the "Covered Vehicle(s)").
- 3. TERM AND TERMINATION.** The term of this Agreement ("Term") for each Covered Vehicle shall begin on the Delivery Date of such Covered Vehicle and shall continue until the last day of the "Term" (as defined in the Lease) for such Covered Vehicle unless earlier terminated as set forth below. Each of EFM and Lessee shall each have the right to terminate this Agreement effective as of the last day of any calendar month with respect to any or all of the Covered Vehicles upon not less than sixty (60) days prior written notice to the other party. The termination of this Agreement with respect to any or all of the Covered Vehicles shall not affect any rights or obligations under this Agreement which shall have previously accrued or shall thereafter arise with respect to any occurrence prior to termination, and such rights and obligations shall continue to be governed by the terms of this Agreement.
- 4. VEHICLE REPAIRS AND SERVICE.** EFM agrees that, during the Term for the applicable Covered Vehicle and subject to the terms and conditions of this Agreement, it will pay for, or reimburse Lessee for its payment of, all costs and expenses incurred in connection with the maintenance or repair of a Covered Vehicle. This Agreement does not cover, and Lessee will remain responsible for and pay for, (a) fuel, (b) oil and other fluids between changes, (c) tire repair and replacement, (d) washing, (e) repair of damage due to lack of maintenance by Lessee between scheduled services (including, without limitation, failure to maintain fluid levels), (f) maintenance or repair of any alterations to a Covered Vehicle or of any after-market components (this Agreement covers maintenance and repair only of the Covered Vehicles themselves and any factory-installed components and does not cover maintenance or repair of chassis alterations, add-on bodies (including, without limitation, step vans) or other equipment (including, without limitation, lift gates and PTO controls) which is installed or modified by a dealer, body shop, upfitter or anyone else other than the manufacturer of the Covered Vehicle, (g) any service and/or damage resulting from, related to or arising out of an accident, a collision, theft, fire, freezing, vandalism, riot, explosion, other Acts of God, an object striking the Covered Vehicle, improper use of the Covered Vehicle (including, without limitation, driving over curbs, overloading, racing or other competition) or Lessee's failure to maintain the Covered Vehicle as required by the Lease, (h) roadside assistance or towing for vehicle maintenance purposes, (i) mobile services, (j) the cost of loaner or rental vehicles or (k) if the Covered Vehicle is a truck, (i) manual transmission clutch adjustment or replacement, (ii) brake adjustment or replacement or (iii) front axle alignment. Whenever it is necessary to have a Covered Vehicle serviced, Lessee agrees to have the necessary work performed by an authorized dealer of such Covered Vehicle or by a service facility acceptable to EFM. In every case, if the cost of such service will exceed \$50.00, Lessee must notify EFM and obtain EFM's authorization for such service and EFM's instructions as to where such service shall be made and the extent of service to be obtained. Lessee agrees to furnish an invoice for all service to a Covered Vehicle, accompanied by a copy of the shop or service order (odometer mileage must be shown on each shop or service order). EFM will not be obligated to pay for any unauthorized charges or those exceeding \$50.00 for one service on any Covered Vehicle unless Lessee has complied with the above terms and conditions. EFM will not have any responsibility to pay for any services in excess of the services recommended by the manufacturer, unless otherwise agreed to by EFM. Notwithstanding any other provision of this Agreement to the contrary, (a) all service performed within one hundred twenty (120) days prior to the last day of the scheduled "Term" (as defined in the Lease) for the applicable Covered Vehicle must be authorized by and have the prior consent and approval of EFM and any service not so authorized will be the responsibility of and be paid for by Lessee and (b) EFM is not required to provide or pay for any service to any Covered Vehicle after 100,000 miles.
- 5. ENTERPRISE CARDS:** EFM may, at its option, provide Lessee with an authorization card (the "EFM Card") for use in authorizing the payment of charges incurred in connection with the maintenance of the Covered Vehicles. Lessee agrees to be liable to EFM for, and upon receipt of a monthly or other statement from EFM, Lessee agrees to promptly pay to EFM, all charges made by or for the account of Lessee with the EFM Card (other than any charges which are the responsibility of EFM under the terms of this Agreement). EFM reserves the right to change the terms and conditions for the use of the EFM Card at any time. The EFM Card remains the property of EFM and EFM may revoke Lessee's right to possess or use the EFM Card at any time. Upon the termination of this Agreement or upon the demand of EFM, Lessee must return the EFM Card to EFM. The EFM Card is non-transferable.
- 6. PAYMENT TERMS.** The amount of the monthly maintenance fee will be listed on the applicable Schedule and will be due and payable in advance on the first day of each month. If the first day of the Term for a Covered Vehicle is other than the first day of a calendar month, Lessee will pay EFM, on the first day of the Term for such Covered Vehicle, a pro-rated maintenance fee for the number of days that the Delivery Date precedes the first monthly maintenance fee payment date. Any monthly maintenance fee or other amount owed by Lessee to EFM under this Agreement which is not paid within twenty (20) days after its due date will accrue interest, payable upon demand of EFM, from the date due until paid in full at a rate per annum equal to the lesser of (i) Eighteen Percent (18%) per annum or (ii) the highest rate allowed by applicable law. The monthly maintenance fee set forth on each applicable Schedule allows the number of miles per month as set forth in such Schedule. Lessee agrees to pay EFM at the end of the applicable Term (whether by reason of termination of this Agreement or otherwise) an overmileage maintenance fee for any miles in excess of this average amount per month at the rate set forth in the applicable Schedule. EFM may, at its option, permit Lessor, as an agent for EFM, to bill and collect amounts due to EFM under this Agreement from Lessee on behalf of EFM.
- 7. NO WARRANTIES.** Lessee acknowledges that EFM does not perform maintenance or repair services on the Covered Vehicles but rather EFM arranges for maintenance and/or repair services on the Covered Vehicles to be performed by third parties. EFM MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCTS, REPAIRS OR SERVICES PROVIDED FOR UNDER THIS AGREEMENT BY THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COMPLIANCE WITH SPECIFICATIONS, OPERATION, CONDITION, SUITABILITY, PERFORMANCE OR QUALITY. ANY DEFECT IN THE PERFORMANCE OF ANY PRODUCT, REPAIR OR SERVICE WILL NOT RELIEVE LESSEE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING THE PAYMENT TO EFM OF THE MONTHLY MAINTENANCE FEES AND OTHER CHARGES DUE UNDER THIS AGREEMENT.

8. LESSOR NOT A PARTY. Lessor is not a party to, and shall have no rights, obligations or duties under or in respect of, this Agreement.

9. NOTICES. Any notice or other communication under this Agreement shall be in writing and delivered in person or sent by facsimile, recognized overnight courier or registered or certified mail, return receipt requested and postage prepaid, to the applicable party at its address or facsimile number set forth on the signature page of this Agreement, or at such other address or facsimile number as any party hereto may designate as its address or facsimile number for communications under this Agreement by notice so given. Such notices shall be deemed effective on the day on which delivered or sent if delivered in person or sent by facsimile, on the first (1st) business day after the day on which sent, if sent by recognized overnight courier or on the third (3rd) business day after the day on which mailed, if sent by registered or certified mail.

10. MISCELLANEOUS. This Agreement embodies the entire Agreement between the parties relating to the subject matter hereof. This Agreement may be amended only by an agreement in writing signed by EFM and Lessee. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provisions in any other jurisdiction. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of EFM. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Missouri (without reference to conflict of law principles).

IN WITNESS WHEREOF, EFM and Lessee have executed this Maintenance Agreement as of the day and year first above written.

LESSEE: City of Calistoga

EFM: Enterprise Fleet Management, Inc.

By: _____

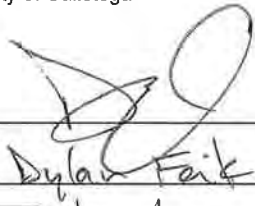
Title: _____

Address: 1232 Washington St.
Calistoga, CA 94515

Attention: _____

Facsimile No.: _____

Date Signed: _____



City Manager

By: _____

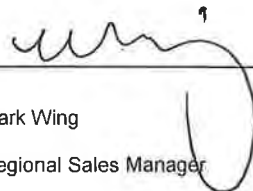
Title: Regional Sales Manager

Address: 2633 Camino Ramon
San Ramon, CA 94583

Attention: _____

Facsimile No.: _____

Date Signed: _____



11/22/17

11/21/2017

MASTER EQUITY LEASE AGREEMENT

This Master Equity Lease Agreement is entered into this sixteenth day of June, 2017, by and between Enterprise FM Trust, a Delaware statutory trust ("Lessor"), and the lessee whose name and address is set forth on the signature page below ("Lessee").

1. LEASE OF VEHICLES: Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the vehicles (individually, a "Vehicle" and collectively, the "Vehicles") described in the schedules from time to time delivered by Lessor to Lessee as set forth below ("Schedule(s)") for the rentals and on the terms set forth in this Agreement and in the applicable Schedule. References to this "Agreement" shall include this Master Equity Lease Agreement and the various Schedules and addenda to this Master Equity Lease Agreement. Lessor will, on or about the date of delivery of each Vehicle to Lessee, send Lessee a Schedule covering the Vehicle, which will include, among other things, a description of the Vehicle, the lease term and the monthly rental and other payments due with respect to the Vehicle. The terms contained in each such Schedule will be binding on Lessee unless Lessee objects in writing to such Schedule within ten (10) days after the date of delivery of the Vehicle covered by such Schedule. Lessor is the sole legal owner of each Vehicle. This Agreement is a lease only and Lessee will have no right, title or interest in or to the Vehicles except for the use of the Vehicles as described in this Agreement. This Agreement shall be treated as a true lease for federal and applicable state income tax purposes with Lessor having all benefits of ownership of the Vehicles. It is understood and agreed that Enterprise Fleet Management, Inc. or an affiliate thereof (together with any subservicer, agent, successor or assign as servicer on behalf of Lessor, "Servicer") may administer this Agreement on behalf of Lessor and may perform the service functions herein provided to be performed by Lessor.

2. TERM: The term of this Agreement ("Term") for each Vehicle begins on the date such Vehicle is delivered to Lessee (the "Delivery Date") and, unless terminated earlier in accordance with the terms of this Agreement, continues for the "Lease Term" as described in the applicable Schedule.

3. RENT AND OTHER CHARGES:

(a) Lessee agrees to pay Lessor monthly rental and other payments according to the Schedules and this Agreement. The monthly payments will be in the amount listed as the "Total Monthly Rental Including Additional Services" on the applicable Schedule (with any portion of such amount identified as a charge for maintenance services under Section 4 of the applicable Schedule being payable to Lessor as agent for Enterprise Fleet Management, Inc.) and will be due and payable in advance on the first day of each month. If a Vehicle is delivered to Lessee on any day other than the first day of a month, monthly rental payments will begin on the first day of the next month. In addition to the monthly rental payments, Lessee agrees to pay Lessor a pro-rated rental charge for the number of days that the Delivery Date precedes the first monthly rental payment date. A portion of each monthly rental payment, being the amount designated as "Depreciation Reserve" on the applicable Schedule, will be considered as a reserve for depreciation and will be credited against the Delivered Price of the Vehicle for purposes of computing the Book Value of the Vehicle under Section 3(c). Lessee agrees to pay Lessor the "Total Initial Charges" set forth in each Schedule on the due date of the first monthly rental payment under such Schedule. Lessee agrees to pay Lessor the "Service Charge Due at Lease Termination" set forth in each Schedule at the end of the applicable Term (whether by reason of expiration, early termination or otherwise).

(b) In the event the Term for any Vehicle ends prior to the last day of the scheduled Term, whether as a result of a default by Lessee, a Casualty Occurrence or any other reason, the rentals and management fees paid by Lessee will be recalculated in accordance with the rule of 78's and the adjusted amount will be payable by Lessee to Lessor on the termination date.

(c) Lessee agrees to pay Lessor within thirty (30) days after the end of the Term for each Vehicle, additional rent equal to the excess, if any, of the Book Value of such Vehicle over the greater of (i) the wholesale value of such Vehicle as determined by Lessor in good faith or (ii) except as provided below, twenty percent (20%) of the Delivered Price of such Vehicle as set forth in the applicable Schedule. If the Book Value of such Vehicle is less than the greater of (i) the wholesale value of such Vehicle as determined by Lessor in good faith or (ii) except as provided below, twenty percent (20%) of the Delivered Price of such Vehicle as set forth in the applicable Schedule, Lessor agrees to pay such deficiency to Lessee as a terminal rental adjustment within thirty (30) days after the end of the applicable Term. Notwithstanding the foregoing, if (i) the Term for a Vehicle is greater than forty-eight (48) months (including any extension of the Term for such Vehicle), (ii) the mileage on a Vehicle at the end of the Term is greater than 15,000 miles per year on average (prorated on a daily basis) (i.e., if the mileage on a Vehicle with a Term of thirty-six (36) months is greater than 45,000 miles) or (iii) in the sole judgment of Lessor, a Vehicle has been subject to damage or any abnormal or excessive wear and tear, the calculations described in the two immediately preceding sentences shall be made without giving effect to clause (ii) in each such sentence. The "Book Value" of a Vehicle means the sum of (i) the "Delivered Price" of the Vehicle as set forth in the applicable Schedule minus (ii) the total Depreciation Reserve paid by Lessee to Lessor with respect to such Vehicle plus (iii) all accrued and unpaid rent and/or other amounts owed by Lessee with respect to such Vehicle.

(d) Any security deposit of Lessee will be returned to Lessee at the end of the applicable Term, except that the deposit will first be applied to any losses and/or damages suffered by Lessor as a result of Lessee's breach of or default under this Agreement and/or to any other amounts then owed by Lessee to Lessor.

(e) Any rental payment or other amount owed by Lessee to Lessor which is not paid within twenty (20) days after its due date will accrue interest, payable on demand of Lessor, from the date due until paid in full at a rate per annum equal to the lesser of (i) Eighteen Percent (18%) per annum or (ii) the highest rate permitted by applicable law (the "Default Rate").

(f) If Lessee fails to pay any amount due under this Agreement or to comply with any of the covenants contained in this Agreement, Lessor, Servicer or any other agent of Lessor may, at its option, pay such amounts or perform such covenants and all sums paid or incurred by Lessor in connection therewith will be repayable by Lessee to Lessor upon demand together with interest thereon at the Default Rate.

(g) Lessee's obligations to make all payments of rent and other amounts under this Agreement are absolute and unconditional and such payments shall be made in immediately available funds without setoff, counterclaim or deduction of any kind. Lessee acknowledges and agrees that neither any Casualty Occurrence to any Vehicle nor any defect, unfitness or lack of governmental approval in, of, or with respect to, any Vehicle regardless of the cause or consequence nor any breach by Enterprise Fleet Management, Inc. of any maintenance agreement between Enterprise Fleet Management, Inc. and Lessee covering any Vehicle regardless of the cause or consequence will relieve Lessee from the performance of any of its obligations under this Agreement, including, without limitation, the payment of rent and other amounts under this Agreement.

4. USE AND SURRENDER OF VEHICLES: Lessee agrees to allow only duly authorized, licensed and insured drivers to use and operate the Vehicles. Lessee agrees to comply with, and cause its drivers to comply with, all laws, statutes, rules, regulations and ordinances and the provisions of all insurance policies affecting or covering the Vehicles or their use or operation. Lessee agrees to keep the Vehicles free of all liens, charges and encumbrances. Lessee agrees that in no event will any Vehicle be used or operated for transporting hazardous substances or persons for hire, for any illegal purpose or to pull trailers that exceed the manufacturer's trailer towing recommendations. Lessee agrees that no Vehicle is intended to be or will be utilized as a "school bus" as defined in the Code of Federal Regulations or any applicable state or municipal statute or regulation. Lessee agrees not to remove any Vehicle from the continental United States without first obtaining Lessor's written consent. At the expiration or earlier termination of this Agreement with respect to each Vehicle, or upon demand by Lessor made pursuant to Section 14, Lessee at its risk and expense agrees to return such Vehicle to Lessor at such place and by such reasonable means as may be designated by Lessor. If for any reason Lessee fails to return any Vehicle to Lessor as and when required in accordance with this Section, Lessee agrees to pay Lessor additional rent for such Vehicle at twice the normal pro-rated daily rent. Acceptance of such additional rent by Lessor will in no way limit Lessor's remedies with respect to Lessee's failure to return any Vehicle as required hereunder.

5. COSTS, EXPENSES, FEES AND CHARGES: Lessee agrees to pay all costs, expenses, fees, charges, fines, tickets, penalties and taxes (other than federal and state income taxes on the income of Lessor) incurred in connection with the titling, registration, delivery, purchase, sale, rental, use or operation of the Vehicles during the Term. If Lessor, Servicer or any other agent of Lessor incurs any such costs or expenses, Lessee agrees to promptly reimburse Lessor for the same.

6. LICENSE AND CHARGES: Each Vehicle will be titled and licensed in the name designated by Lessor at Lessee's expense. Certain other charges relating to the acquisition of each Vehicle and paid or satisfied by Lessor have been capitalized in determining the monthly rental, treated as an initial charge or otherwise charged to Lessee. Such charges have been determined without reduction for trade-in, exchange allowance or other credit attributable to any Lessor-owned vehicle.

7. REGISTRATION PLATES, ETC.: Lessee agrees, at its expense, to obtain in the name designated by Lessor all registration plates and other plates, permits, inspections and/or licenses required in connection with the Vehicles, except for the initial registration plates which Lessor will obtain at Lessee's expense. The parties agree to cooperate and to furnish any and all information or documentation, which may be reasonably necessary for compliance with the provisions of this Section or any federal, state or local law, rule, regulation or ordinance. Lessee agrees that it will not permit any Vehicle to be located in a state other than the state in which such Vehicle is then titled for any continuous period of time that would require such Vehicle to become subject to the titling and/or registration laws of such other state.

8. MAINTENANCE OF AND IMPROVEMENTS TO VEHICLES:

(a) Lessee agrees, at its expense, to (i) maintain the Vehicles in good condition, repair, maintenance and running order and in accordance with all manufacturer's instructions and warranty requirements and all legal requirements and (ii) furnish all labor, materials, parts and other essentials required for the proper operation and maintenance of the Vehicles. Any alterations, additions, replacement parts or improvements to a Vehicle will become and remain the property of Lessor and will be returned with such Vehicle upon such Vehicle's return pursuant to Section 4. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, Lessee shall have the right to remove any additional equipment installed by Lessee on a Vehicle prior to returning such Vehicle to Lessor under Section 4. The value of such alterations, additions, replacement parts and improvements will in no instance be regarded as rent. Without the prior written consent of Lessor, Lessee will not make any alterations, additions, replacement parts or improvements to any Vehicle which detract from its economic value or functional utility. Lessor will not be required to make any repairs or replacements of any nature or description with respect to any Vehicle, to maintain or repair any Vehicle or to make any expenditure whatsoever in connection with any Vehicle or this Agreement.

(b) Lessor and Lessee acknowledge and agree that if Section 4 of a Schedule includes a charge for maintenance, (i) the Vehicle(s) covered by such Schedule are subject to a separate maintenance agreement between Enterprise Fleet Management, Inc. and Lessee and (ii) Lessor shall have no liability or responsibility for any failure of Enterprise Fleet Management, Inc. to perform any of its obligations thereunder or to pay or reimburse Lessee for its payment of any costs and expenses incurred in connection with the maintenance or repair of any such Vehicle(s).

9. SELECTION OF VEHICLES AND DISCLAIMER OF WARRANTIES:

(a) LESSEE ACCEPTANCE OF DELIVERY AND USE OF EACH VEHICLE WILL CONCLUSIVELY ESTABLISH THAT SUCH VEHICLE IS OF A SIZE, DESIGN, CAPACITY, TYPE AND MANUFACTURE SELECTED BY LESSEE AND THAT SUCH VEHICLE IS IN GOOD CONDITION AND REPAIR AND IS SATISFACTORY IN ALL RESPECTS AND IS SUITABLE FOR LESSEE'S PURPOSE. LESSEE ACKNOWLEDGES THAT LESSOR IS NOT A MANUFACTURER OF ANY VEHICLE OR AN AGENT OF A MANUFACTURER OF ANY VEHICLE.

(b) LESSOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY VEHICLE, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY LESSEE. THE VEHICLES ARE LEASED "AS IS," "WITH ALL FAULTS." All warranties made by any supplier, vendor and/or manufacturer of a Vehicle are hereby assigned by Lessor to Lessee for the applicable Term and Lessee's only remedy, if any, is against the supplier, vendor or manufacturer of the Vehicle.

(c) None of Lessor, Servicer or any other agent of Lessor will be liable to Lessee for any liability, claim, loss, damage (direct, incidental or consequential) or expense of any kind or nature, caused directly or indirectly, by any Vehicle or any inadequacy of any Vehicle for any purpose or any defect (latent or patent) in any Vehicle or the use or maintenance of any Vehicle or any repair, servicing or adjustment of or to any Vehicle, or any delay in providing or failure to provide any Vehicle, or any interruption or loss of service or use of any Vehicle, or any loss of business or any damage whatsoever and however caused. In addition, none of Lessor, Servicer or any other agent of Lessor will have any liability to Lessee under this Agreement or under any order authorization form executed by Lessee if Lessor is unable to locate or purchase a Vehicle ordered by Lessee or for any delay in delivery of any Vehicle ordered by Lessee.

10. RISK OF LOSS: Lessee assumes and agrees to bear the entire risk of loss of, theft of, damage to or destruction of any Vehicle from any cause whatsoever ("Casualty Occurrence"). In the event of a Casualty Occurrence to a Vehicle, Lessee shall give Lessor prompt notice of the Casualty Occurrence and thereafter will place the applicable Vehicle in good repair, condition and working order; provided, however, that if the applicable Vehicle is determined by Lessor to be lost, stolen, destroyed or damaged beyond repair (a "Totaled Vehicle"), Lessee agrees to pay Lessor no later than the date thirty (30) days after the date of the Casualty Occurrence the amounts owed under Sections 3(b) and 3(c) with respect to such Totaled Vehicle. Upon such payment, this Agreement will terminate with respect to such Totaled Vehicle.

11. INSURANCE:

(a) Lessee agrees to purchase and maintain in force during the Term, insurance policies in at least the amounts listed below covering each Vehicle, to be written by an insurance company or companies satisfactory to Lessor, insuring Lessee, Lessor and any other person or entity designated by Lessor against any damage, claim, suit, action or liability:

(i) Commercial Automobile Liability Insurance (including Uninsured/Underinsured Motorist Coverage and No-Fault Protection where required by law) for the limits listed below (Note - \$2,000,000 Combined Single Limit Bodily Injury and Property Damage with No Deductible is required for each Vehicle capable of transporting more than 8 passengers):

<u>State of Vehicle Registration</u>	<u>Coverage</u>
Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont	\$1,000,000 Combined Single Limit Bodily Injury and Property Damage - No Deductible
Florida	\$500,000 Combined Single Limit Bodily Injury and Property Damage or \$100,000 Bodily Injury Per Person, \$300,000 Per Occurrence and \$50,000 Property Damage (100/300/50) - No Deductible
All Other States	\$300,000 Combined Single Limit Bodily Injury and Property Damage or \$100,000 Bodily Injury Per Person, \$300,000 Per Occurrence and \$50,000 Property Damage (100/300/50) - No Deductible

(ii) Physical Damage Insurance (Collision & Comprehensive): Actual cash value of the applicable Vehicle. Maximum deductible of \$500 per occurrence - Collision and \$250 per occurrence - Comprehensive).

Initials: EFM  Cust 

If the requirements of any governmental or regulatory agency exceed the minimums stated in this Agreement, Lessee must obtain and maintain the higher insurance requirements. Lessee agrees that each required policy of insurance will by appropriate endorsement or otherwise name Lessor and any other person or entity designated by Lessor as additional insureds and loss payees, as their respective interests may appear. Further, each such insurance policy must provide the following: (i) that the same may not be cancelled, changed or modified until after the insurer has given to Lessor, Servicer and any other person or entity designated by Lessor at least thirty (30) days prior written notice of such proposed cancellation, change or modification, (ii) that no act or default of Lessee or any other person or entity shall affect the right of Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns to recover under such policy or policies of insurance in the event of any loss of or damage to any Vehicle and (iii) that the coverage is "primary coverage" for the protection of Lessee, Lessor, Servicer, any other agent of Lessor and their respective successors and assigns notwithstanding any other coverage carried by Lessee, Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns protecting against similar risks. Original certificates evidencing such coverage and naming Lessor, Servicer, any other agent of Lessor and any other person or entity designated by Lessor as additional insureds and loss payees shall be furnished to Lessor prior to the Delivery Date, and annually thereafter and/or as reasonably requested by Lessor from time to time. In the event of default, Lessee hereby appoints Lessor, Servicer and any other agent of Lessor as Lessee's attorney-in-fact to receive payment of, to endorse all checks and other documents and to take any other actions necessary to pursue insurance claims and recover payments if Lessee fails to do so. Any expense of Lessor, Servicer or any other agent of Lessor in adjusting or collecting insurance shall be borne by Lessee.

Lessee, its drivers, servants and agents agree to cooperate fully with Lessor, Servicer, any other agent of Lessor and any insurance carriers in the investigation, defense and prosecution of all claims or suits arising from the use or operation of any Vehicle. If any claim is made or action commenced for death, personal injury or property damage resulting from the ownership, maintenance, use or operation of any Vehicle, Lessee will promptly notify Lessor of such action or claim and forward to Lessor a copy of every demand, notice, summons or other process received in connection with such claim or action.

(b) Notwithstanding the provisions of Section 11(a) above: (i) if Section 4 of a Schedule includes a charge for physical damage waiver, Lessor agrees that (A) Lessee will not be required to obtain or maintain the minimum physical damage insurance (collision and comprehensive) required under Section 11(a) for the Vehicle(s) covered by such Schedule and (B) Lessor will assume the risk of physical damage (collision and comprehensive) to the Vehicle(s) covered by such Schedule; provided, however, that such physical damage waiver shall not apply to, and Lessee shall be and remain liable and responsible for, damage to a covered Vehicle caused by wear and tear or mechanical breakdown or failure, damage to or loss of any parts, accessories or components added to a covered Vehicle by Lessee without the prior written consent of Lessor and/or damage to or loss of any property and/or personal effects contained in a covered Vehicle. In the event of a Casualty Occurrence to a covered Vehicle, Lessor may, at its option, replace, rather than repair, the damaged Vehicle with an equivalent vehicle, which replacement vehicle will then constitute the "Vehicle" for purposes of this Agreement; and (ii) if Section 4 of a Schedule includes a charge for commercial automobile liability enrollment, Lessor agrees that it will, at its expense, obtain for and on behalf of Lessee, by adding Lessee as an additional insured under a commercial automobile liability insurance policy issued by an insurance company selected by Lessor, commercial automobile liability insurance satisfying the minimum commercial automobile liability insurance required under Section 11(a) for the Vehicle(s) covered by such Schedule. Lessor may at any time during the applicable Term terminate said obligation to provide physical damage waiver and/or commercial automobile liability enrollment and cancel such physical damage waiver and/or commercial automobile liability enrollment upon giving Lessee at least ten (10) days prior written notice. Upon such cancellation, insurance in the minimum amounts as set forth in 11(a) shall be obtained and maintained by Lessee at Lessee's expense. An adjustment will be made in monthly rental charges payable by Lessee to reflect any such change and Lessee agrees to furnish Lessor with satisfactory proof of insurance coverage within ten (10) days after mailing of the notice. In addition, Lessor may change the rates charged by Lessor under this Section 11(b) for physical damage waiver and/or commercial automobile liability enrollment upon giving Lessee at least thirty (30) days prior written notice.

12. INDEMNITY: To the extent permitted by state law, Lessee agrees to defend and indemnify Lessor, Servicer, any other agent of Lessor and their respective successors and assigns from and against any and all losses, damages, liabilities, suits, claims, demands, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) which Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns may incur by reason of Lessee's breach or violation of, or failure to observe or perform, any term, provision or covenant of this Agreement, or as a result of any loss, damage, theft or destruction of any Vehicle or related to or arising out of or in connection with the use, operation or condition of any Vehicle. The provisions of this Section 12 shall survive any expiration or termination of this Agreement. Nothing herein shall be deemed to affect the rights, privileges, and immunities of Lessee and the foregoing indemnity provision is not intended to be a waiver of any sovereign immunity afforded to Lessee pursuant to the law.

13. INSPECTION OF VEHICLES; ODOMETER DISCLOSURE; FINANCIAL STATEMENTS: Lessee agrees to accomplish, at its expense, all inspections of the Vehicles required by any governmental authority during the Term. Lessor, Servicer, any other agent of Lessor and any of their respective successors or assigns will have the right to inspect any Vehicle at any reasonable time(s) during the Term and for this purpose to enter into or upon any building or place where any Vehicle is located. Lessee agrees to comply with all odometer disclosure laws, rules and regulations and to provide such written and signed disclosure information on such forms and in such manner as directed by Lessor. Providing false information or failure to complete the odometer disclosure form as required by law may result in fines and/or imprisonment. Lessee hereby agrees to promptly deliver to Lessor such financial statements and other financial information regarding Lessee as Lessor may from time to time reasonably request.

14. DEFAULT; REMEDIES: The following shall constitute events of default ("Events of Default") by Lessee under this Agreement: (a) if Lessee fails to pay when due any rent or other amount due under this Agreement and any such failure shall remain unremedied for ten (10) days; (b) if Lessee fails to perform, keep or observe any term, provision or covenant contained in Section 11 of this Agreement; (c) if Lessee fails to perform, keep or observe any other term, provision or covenant contained in this Agreement and any such failure shall remain unremedied for thirty (30) days after written notice thereof is given by Lessor, Servicer or any other agent of Lessor to Lessee; (d) any seizure or confiscation of any Vehicle or any other act (other than a Casualty Occurrence) otherwise rendering any Vehicle unsuitable for use (as determined by Lessor); (e) if any present or future guaranty in favor of Lessor of all or any portion of the obligations of Lessee under this Agreement shall at any time for any reason cease to be in full force and effect or shall be declared to be null and void by a court of competent jurisdiction, or if the validity or enforceability of any such guaranty shall be contested or denied by any guarantor, or if any guarantor shall deny that it, he or she has any further liability or obligation under any such guaranty or if any guarantor shall fail to comply with or observe any of the terms, provisions or conditions contained in any such guaranty; (f) the occurrence of a material adverse change in the financial condition or business of Lessee or any guarantor; or (g) if Lessee or any guarantor is in default under or fails to comply with any other present or future agreement with or in favor of Lessor, The Crawford Group, Inc. or any direct or indirect subsidiary of The Crawford Group, Inc.. For purposes of this Section 14, the term "guarantor" shall mean any present or future guarantor of all or any portion of the obligations of Lessee under this Agreement.

Upon the occurrence of any Event of Default, Lessor, without notice to Lessee, will have the right to exercise concurrently or separately (and without any election of remedies being deemed made), the following remedies: (a) Lessor may demand and receive immediate possession of any or all of the Vehicles from Lessee, without releasing Lessee from its obligations under this Agreement; if Lessee fails to surrender possession of the Vehicles to Lessor on default (or termination or expiration of the Term), Lessor, Servicer, any other agent of Lessor and any of Lessor's independent contractors shall have the right to enter upon any premises where the Vehicles may be located and to remove and repossess the Vehicles; (b) Lessor may enforce performance by Lessee of its obligations under this Agreement; (c) Lessor may recover damages and expenses sustained by Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns by reason of Lessee's default including, to the extent permitted by applicable law, all costs and expenses, including court costs and reasonable attorneys' fees and expenses, incurred by Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns in attempting or effecting enforcement of Lessor's rights under this Agreement (whether or not litigation is commenced) and/or in connection with bankruptcy or insolvency proceedings; (d) upon written notice to Lessee, Lessor may terminate Lessee's rights

under this Agreement; (e) with respect to each Vehicle, Lessor may recover from Lessee all amounts owed by Lessee under Sections 3(b) and 3(c) of this Agreement (and, if Lessor does not recover possession of a Vehicle, (i) the estimated wholesale value of such Vehicle for purposes of Section 3(c) shall be deemed to be \$0.00 and (ii) the calculations described in the first two sentences of Section 3(c) shall be made without giving effect to clause (ii) in each such sentence); and/or (f) Lessor may exercise any other right or remedy which may be available to Lessor under the Uniform Commercial Code, any other applicable law or in equity. A termination of this Agreement shall occur only upon written notice by Lessor to Lessee. Any termination shall not affect Lessee's obligation to pay all amounts due for periods prior to the effective date of such termination or Lessee's obligation to pay any indemnities under this Agreement. All remedies of Lessor under this Agreement or at law or in equity are cumulative.

15. ASSIGNMENTS: Lessor may from time to time assign, pledge or transfer this Agreement and/or any or all of its rights and obligations under this Agreement to any person or entity. Lessee agrees, upon notice of any such assignment, pledge or transfer of any amounts due or to become due to Lessor under this Agreement to pay all such amounts to such assignee, pledgee or transferee. Any such assignee, pledgee or transferee of any rights or obligations of Lessor under this Agreement will have all of the rights and obligations that have been assigned to it. Lessee's rights and interest in and to the Vehicles are and will continue at all times to be subject and subordinate in all respects to any assignment, pledge or transfer now or hereafter executed by Lessor with or in favor of any such assignee, pledgee or transferee, provided that Lessee shall have the right of quiet enjoyment of the Vehicles so long as no Event of Default under this Agreement has occurred and is continuing. Lessee acknowledges and agrees that the rights of any assignee, pledgee or transferee in and to any amounts payable by the Lessee under any provisions of this Agreement shall be absolute and unconditional and shall not be subject to any abatement whatsoever, or to any defense, setoff, counterclaim or recoupment whatsoever, whether by reason of any damage to or loss or destruction of any Vehicle or by reason of any defect in or failure of title of the Lessor or interruption from whatsoever cause in the use, operation or possession of any Vehicle, or by reason of any indebtedness or liability howsoever and whenever arising of the Lessor or any of its affiliates to the Lessee or to any other person or entity, or for any other reason.

Without the prior written consent of Lessor, Lessee may not assign, sublease, transfer or pledge this Agreement, any Vehicle, or any interest in this Agreement or in and to any Vehicle, or permit its rights under this Agreement or any Vehicle to be subject to any lien, charge or encumbrance. Lessee's interest in this Agreement is not assignable and cannot be assigned or transferred by operation of law. Lessee will not transfer or relinquish possession of any Vehicle (except for the sole purpose of repair or service of such Vehicle) without the prior written consent of Lessor.

16. MISCELLANEOUS: This Agreement contains the entire understanding of the parties. This Agreement may only be amended or modified by an instrument in writing executed by both parties. Lessor shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies under this Agreement and no waiver whatsoever shall be valid unless in writing and signed by Lessor and then only to the extent therein set forth. A waiver by Lessor of any right or remedy under this Agreement on any one occasion shall not be construed as a bar to any right or remedy, which Lessor would otherwise have on any future occasion. If any term or provision of this Agreement or any application of any such term or provision is invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision will not be affected thereby. Giving of all notices under this Agreement will be sufficient if mailed by certified mail to a party at its address set forth below or at such other address as such party may provide in writing from time to time. Any such notice mailed to such address will be effective one (1) day after deposit in the United States mail, duly addressed, with certified mail, postage prepaid. Lessee will promptly notify Lessor of any change in Lessee's address. This Agreement may be executed in multiple counterparts (including facsimile and pdf counterparts), but the counterpart marked "ORIGINAL" by Lessor will be the original lease for purposes of applicable law. All of the representations, warranties, covenants, agreements and obligations of each Lessee under this Agreement (if more than one) are joint and several.

17. SUCCESSORS AND ASSIGNS; GOVERNING LAW: Subject to the provisions of Section 15, this Agreement will be binding upon Lessee and its heirs, executors, personal representatives, successors and assigns, and will inure to the benefit of Lessor, Servicer, any other agent of Lessor and their respective successors and assigns. This Agreement will be governed by and construed in accordance with the substantive laws of the State of Missouri (determined without reference to conflict of law principles).

18. NON-PETITION: Each party hereto hereby covenants and agrees that, prior to the date which is one year and one day after payment in full of all indebtedness of Lessor, it shall not institute against, or join any other person in instituting against, Lessor any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other similar proceeding under the laws of the United States or any state of the United States. The provisions of this Section 18 shall survive termination of this Master Equity Lease Agreement.

19. NON-APPROPRIATION: Lessee's funding of this Agreement shall be on a Fiscal Year basis and is subject to annual appropriations. Lessor acknowledges that Lessee is a municipal corporation, is precluded by the County or State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the County or State to appropriate funds for purposes of this Agreement. Accordingly, the parties agree that the lease terms within this Agreement or any Schedules relating hereto are contingent upon appropriation of funds. The parties further agree that should the County or State fail to appropriate such funds, the Lessor shall be paid all rentals due and owing hereunder up until the actual day of termination. In addition, Lessor reserves the right to be paid for any reasonable damages. These reasonable damages will be limited to the losses incurred by the Lessor for having to sell the vehicles on the open used car market prior to the end of the scheduled term (as determined in Section 3 and Section 14 of this Agreement).

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Master Equity Lease Agreement as of the day and year first above written.

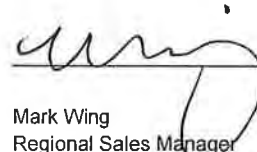
LESSEE: City of Calistoga

LESSOR: Enterprise FM Trust
By: Enterprise Fleet Management, Inc., its attorney in fact

By: _____
Title: _____


Dylan Fair
City Manager

By: _____
Title: _____


Mark Wing
Regional Sales Manager

Address: 1232 Washington St.
Calistoga, CA 94515

Address: 2633 Camino Ramon
San Ramon, CA 94583

Date
Signed: _____

11/22/17

Date
Signed: _____

11/21/2017

Initials: EFM  Cust 

SELF -INSURANCE ADDENDUM TO MASTER EQUITY LEASE AGREEMENT
(Physical Damage and Liability)

This Addendum is made to the Master Equity Lease Agreement dated the sixteenth day of June, 2017, as amended (the "Agreement"), by and between Enterprise FM Trust, a Delaware statutory trust ("Lessor"), and the lessee whose name is set forth on the signature line below ("Lessee").

This Addendum is attached to and made a part of the Agreement (including each Schedule to the Agreement). All capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to them in the Agreement.

Notwithstanding the provisions of Section 11 of the Agreement, Lessee shall be permitted to assume and self-insure the risks set forth in Section 11 of the Agreement and shall not be required to purchase or maintain any insurance policy of any kind with respect to any Vehicle; provided, however, that if any Federal, state, local or other law, statute, rule, regulation or ordinance requires Lessee to maintain any amount of insurance with respect to any Vehicle, Lessee shall purchase and maintain such amount of Insurance in the form of an insurance policy which complies in all respects, other than the amount of insurance required, with Section 11 of the Agreement.

Notwithstanding the foregoing, if (1) Lessor, at any time in its good faith judgment, is not satisfied with the condition, prospects or performances, financial or otherwise, of Lessee or (2) any default or event of default occurs under the Agreement, then Lessor may, at its option, revoke this Addendum and terminate Lessee's right to self-insure by providing Lessee with at least thirty (30) days prior written notice thereof. Upon the termination of Lessee's right to self-insure, Lessee shall comply in all respects with Section 11 of the Agreement.

Except as amended hereby, all the terms and provisions of the Agreement shall remain in full force and effect. In the event of any conflict between this Addendum and the Agreement or any of the Schedules, the terms and provisions of this Addendum will govern and control.

LESSEE: City of Calistoga

LESSOR: Enterprise FM Trust
By: Enterprise Fleet Management, Inc., its attorney in fact

By: Dylan Feik
Title: City Manager

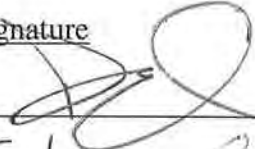

By: Mark Wing
Title: Regional Sales Manager

Date Signed: 11/22/17

Date Signed: 11/21/2017

Authorized Signature Certificate

The undersigned hereby certifies (i) that he is the duly appointed "Title" for "Entity Legal Name" hereafter known as "The Entity", (ii) that he is authorized by The Entity to execute and deliver on behalf of The Entity to Enterprise Fleet Management, hereafter known as "Enterprise" a "State" statutory trust ("Lessor") and the Master Equity Lease Agreement between Enterprise and the Entity the ("Lessee"), and (iii) that the following individuals are authorized and empowered on behalf of and in the name of The Entity to execute and deliver to Enterprise Schedules to the Lease for individual motor vehicles, together with any other necessary documents in connection with those Schedules:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Dylan Feik	City Manager	
Gloria Leon	Administrative Services Director	

Federal ID #: 94-6000305

Date: November 21, 2017



Open-End (Equity) Lease Rate Quote

Quote No: 3699677

Prepared For: City of Calistoga

Date 11/21/2017
AE/AM KW3

Unit

Year 2018 Make Chevrolet Model Colorado

Series WT 4x4 Extended Cab 6 ft. box 128.3 in. WB

Vehicle Order Type Ordered Term 60 State CA Customer# 570047

\$ 29,546.60	Capitalized Price of Vehicle ¹
\$ 0.00	* Sales Tax 0.0000% State CA
\$ 464.21	* Initial License Fee
\$ 0.00	Registration Fee
\$ 0.00	Other: Courtesy Delivery Fee
\$ 0.00	Capitalized Price Reduction
\$ 0.00	Tax on Capitalized Price Reduction
\$ 0.00	Gain Applied From Prior Unit
\$ 0.00	* Tax on Gain On Prior
\$ 0.00	* Security Deposit
\$ 0.00	* Tax on Incentive(Taxable Incentive Total : \$0.00)
\$ 29,546.60	Total Capitalized Amount (Delivered Price)
\$ 398.88	Depreciation Reserve @ 1.3500%
\$ 110.48	Monthly Lease Charge (Based on Interest Rate - Subject to a Floor) ²

\$ 509.36 Total Monthly Rental Excluding Additional Services

Additional Fleet Management

Master Policy Enrollment Fees

\$ 0.00 Commercial Automobile Liability Enrollment
Liability Limit \$0.00

\$ 0.00 Physical Damage Management

\$ 35.57 Full Maintenance Program³ Contract Miles 50,000
Incl: # Brake Sets (1 set = 1 Axle) 0

\$ 35.57 Additional Services SubTotal

\$ 39.48 Sales Tax 7.7500%

\$ 584.41 Total Monthly Rental Including Additional Services

\$ 5,613.80 Reduced Book Value at 60 Months

\$ 400.00 Service Charge Due at Lease Termination

All language and acknowledgments contained in the signed quote apply to all vehicles that are ordered under this signed quote.

Order Information

Driver Name

Exterior Color (0 P) Summit White

Interior Color (0 I) Jet Black/Dark Ash w/Cloth Seat Trim

Lic. Plate Type Unknown

GVWR 0

Comp/Coll Deductible 0 / 0

OverMileage Charge \$ 0.0400 Per Mile

Tires 0

Loaner Vehicle Not Included

Quote based on estimated annual mileage of 10,000

(Current market and vehicle conditions may also affect value of vehicle)

(Quote is Subject to Customer's Credit Approval)

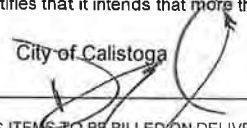
Notes

Enterprise FM Trust will be the owner of the vehicle covered by this Quote. Enterprise FM Trust (not Enterprise Fleet Management) will be the Lessor of such vehicle under the Master Open - End (Equity) Lease Agreement and shall have all rights and obligations of the Lessor under the Master Open - End (Equity) Lease Agreement with respect to such vehicle.

ALL TAX AND LICENSE FEES TO BE BILLED TO LESSEE AS THEY OCCUR.

Lessee hereby authorizes this vehicle order, agrees to lease the vehicle on the terms set forth herein and in the Master Equity Lease Agreement and agrees that Lessor shall have the right to collect damages in the event Lessee fails or refuses to accept delivery of the ordered vehicle.

Lessee certifies that it intends that more than 50% of the use of the vehicle is to be in a trade or business of the Lessee.

LESSEE City of Calistoga
BY 

TITLE

City Manager

DATE

11/28/17

* INDICATES ITEMS TO BE BILLED ON DELIVERY

¹ Capitalized Price of Vehicle May be Adjusted to Reflect Final Manufacturer's Invoice. Lessee Hereby Assigns to Lessor any Manufacturer Rebates And/Or Manufacturer Incentives Intended for the Lessee, Which Rebates And/Or Incentives Have Been Used By Lessor to Reduce the Capitalized Price of the Vehicle

² Monthly Lease Charge Will Be Adjusted to Reflect the Interest Rate on the Delivery Date (Subject to a Floor).

³ The inclusion herein of references to maintenance fees/services are solely for the administrative convenience of Lessee. Notwithstanding the inclusion of such references in this [Invoice/Schedule/Quote], all such maintenance services are to be performed by Enterprise Fleet Management, Inc., and all such maintenance fees are payable by Lessee solely for the account of Enterprise Fleet Management, Inc., pursuant to that certain separate [Maintenance Agreement] entered into by and between Lessee and Enterprise Fleet Management, Inc.; provided that such maintenance fees are being billed by Enterprise FM Trust, and are payable at the direction of Enterprise FM Trust, solely as an authorized agent for collection on behalf of Enterprise Fleet Management, Inc.

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Page 1 of 5

CONFIGURED FEATURES:

Body Exterior Features:

Number Of Doors: 4
Rear Driver Door: reverse opening rear passenger doors
Rear Cargo Door Type: tailgate
Driver And Passenger Mirror: manual folding side-view door mirrors
Door Handles: black
Front And Rear Bumpers: body-coloured front and rear bumpers with black rub strip
Rear Step Bumper: rear step bumper
Front Tow Hooks: 2 front tow hooks
Box Style: regular
Body Material: galvanized steel/aluminum body material
: class IV trailering with harness, hitch
Grille: chrome grille

Convenience Features:

Air Conditioning: manual air conditioning
Power Windows: power windows with driver 1-touch down
Auto Locking: auto-locking doors
Steering Wheel: steering wheel with manual tilting
Day-Night Rearview Mirror: day-night rearview mirror
Front Cupholder: front and rear cupholders
Floor Console: full floor console with covered box
Glove Box: glove box
Driver Door Bin: driver and passenger door bins
Rear Door Bins: rear door bins
Dashboard Storage: dashboard storage
IP Storage: bin instrument-panel storage
Rear Underseat Storage Tray: rear underseat storage tray
Driver Footrest: driver's footrest
Retained Accessory Power: retained accessory power
Power Accessory Outlet: 2 12V DC power outlets

Entertainment Features:

radio: AM/FM stereo with seek-scan
Radio Data System: radio data system
Voice Activated Radio: voice activated radio
Speakers: 6 speakers
1st Row LCD: 1 1st row LCD monitor
Wireless Connectivity: wireless phone connectivity
Antenna: integrated roof antenna

Lighting, Visibility and Instrumentation Features:

Headlamp Type: delay-off aero-composite halogen headlamps
Cab Clearance Lights: cargo bed light
Front Wipers: variable intermittent wipers
Front Windshield Visor Strip: front windshield visor strip
Tinted Windows: light-tinted windows
Dome Light: dome light with fade
Variable IP Lighting: variable instrument panel lighting
Display Type: analog display
Tachometer: tachometer
Low Tire Pressure Warning: tire specific low-tire-pressure warning
Trip Computer: trip computer
Trip Odometer: trip odometer
Water Temp Gauge: water temp. gauge
Clock: in-radio display clock
Systems Monitor: systems monitor
Rear Vision Camera: rear vision camera
Oil Pressure Warning: oil-pressure warning
Water Temp Warning: water-temp. warning
Battery Warning: battery warning
Low Coolant Warning: low-coolant warning
Lights On Warning: lights-on warning

Key in Ignition Warning: key-in-ignition warning
Low Fuel Warning: low-fuel warning
Low Washer Fluid Warning: low-washer-fluid warning
Door Ajar Warning: door-ajar warning
Brake Fluid Warning: brake-fluid warning
Turn Signal On Warning: turn-signal-on warning
Transmission Fluid Temperature Warning: transmission-fluid-temperature warning

Safety And Security:

ABS four-wheel ABS brakes
Number of ABS Channels: 4 ABS channels
Brake Type: four-wheel disc brakes
Vented Disc Brakes: front ventilated disc brakes
Daytime Running Lights: daytime running lights
Spare Tire Type: full-size spare tire
Spare Tire Mount: underbody mounted spare tire w/crankdown
Driver Front Impact Airbag: driver and passenger front-impact airbags
Driver Side Airbag: seat-mounted driver and passenger side-impact airbags
Overhead Airbag: curtain 1st and 2nd row overhead airbag
Occupancy Sensor: front passenger airbag occupancy sensor
Height Adjustable Seatbelts: height adjustable front seatbelts
Seatbelt Pretensioners: front seatbelt pre-tensioners
Side Impact Bars: side-impact bars
Tailgate/Rear Door Lock Type: manual tailgate/rear door lock
Ignition Disable: PASS-Key III+ immobilizer
Electronic Stability: StabiliTrak w/Proactive Roll Avoidance electronic stability stability control with anti-roll
Traction Control: ABS and driveline traction control
Front and Rear Headrests: manual adjustable front head restraints
Rear Headrest Control: 2 rear head restraints

Seats And Trim:

Seating Capacity max. seating capacity of 4
Front Bucket Seats: front bucket seats
Number of Driver Seat Adjustments: 6-way driver and passenger seat adjustments
Reclining Driver Seat: manual reclining driver and passenger seats
Driver Height Adjustment: power height-adjustable driver and passenger seats
Driver Fore/Aft: power driver and passenger fore/aft adjustment
Front Centre Armrest Storage: front centre armrest
Rear Seat Type: rear jump seat
Rear Folding Position: rear seat fold-up cushion
Leather Upholstery: cloth front seat upholstery
Rear Seat Material: vinyl rear seat upholstery
Headliner Material: full cloth headliner
Floor Covering: full vinyl/rubber floor covering
Cabbage Insulator: cabbage insulator
Shift Knob Trim: urethane shift knob

Standard Engine:

Engine 308-hp, 3.6-liter V-6 (regular gas)

Standard Transmission:

Transmission 8-speed automatic w/ OD and auto-manual



1420 Brewster Creek Blvd. - Bartlett, IL 60103
Phone (630) 860-5600 - Fax (630) 445-0030

We put the **work** in **work trucks**.

Quote #85333-R1

Quote Date: 11/3/2017

Page 1 of 1

Company: ENTERPRISE FLEET MANAGEMENT	Quote Expiration Date: 2/1/2018	Reference: COLORADO/NISSAN
Street Address: 9315 OLIVE BLVD	Contact: KRISTY WILHITE	
City, State/Province Zip: SAINT LOUIS, MO	Phone: 925-359-6541	Fax: 877-859-1763
We hereby submit specifications and estimates for:		

CAB PROTECTOR \$476.00
FURNISH AND INSTALL WEATHER GUARD MODEL 1906-3
WHITE STEEL PUNCHED SCREEN CAB PROTECTOR
FOR FULL SIZE PICKUP

LED 6" ROOF BEACON \$230.00
6" Amber LED Roof Beacon
Ecco 7965A, mounted to roof

RHINO SPRAY 6 1/2' BED UTR \$417.00
SPRAY IN LINER - 6-1/2' Pickup Bed Underrail

☐ SHIP THRU
ST LOUIS CODE:
(TBQ) COLORADO

NOTE-

Due to ship through high restrictions, components like ladder racks, bulkheads, stake racks etc. may need to be removed for shipping and reinstalled at the end destination. Auto Truck Group will not be responsible for any additional charges.

Submitted By: Chris Hall

Accepted By: _____ Date: _____

Price may vary due to applicable tax or options selected

Make:	Model:	Cab to Axle:
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Open-End (Equity) Lease Rate Quote

Quote No: 3691448

Prepared For: City of Calistoga

Date 11/21/2017

AE/AM KW3

Unit #

Year 2018 Make Chevrolet Model Colorado

Series WT 4x4 Crew Cab 6 ft. box 140.5 in, WB

Vehicle Order Type Ordered Term 60 State CA Customer# 570047

\$ 30,919.55	Capitalized Price of Vehicle ¹
\$ 0.00	* Sales Tax 0.0000% State CA
\$ 487.25	* Initial License Fee
\$ 0.00	Registration Fee
\$ 0.00	Other: Courtesy Delivery Fee
\$ 0.00	Capitalized Price Reduction
\$ 0.00	Tax on Capitalized Price Reduction
\$ 0.00	Gain Applied From Prior Unit
\$ 0.00	* Tax on Gain On Prior
\$ 0.00	* Security Deposit
\$ 0.00	* Tax on Incentive(Taxable Incentive Total : \$0.00)

\$ 30,919.55 Total Capitalized Amount (Delivered Price)

\$ 417.41 Depreciation Reserve @ 1.3500%

\$ 115.86 Monthly Lease Charge (Based on Interest Rate - Subject to a Floor)²

\$ 533.27 Total Monthly Rental Excluding Additional Services

Additional Fleet Management

Master Policy Enrollment Fees

\$ 0.00 Commercial Automobile Liability Enrollment

Liability Limit \$0.00

\$ 0.00 Physical Damage Management

\$ 35.57 Full Maintenance Program³ Contract Miles 50,000

Incl: # Brake Sets (1 set = 1 Axle) 0

\$ 35.57 Additional Services SubTotal

\$ 41.33 Sales Tax 7.7500%

State CA

\$ 610.17 Total Monthly Rental Including Additional Services

\$ 5,874.95 Reduced Book Value at 60 Months

\$ 400.00 Service Charge Due at Lease Termination

All language and acknowledgments contained in the signed quote apply to all vehicles that are ordered under this signed quote.

Order Information

Driver Name

Exterior Color (0 P) Summit White

Interior Color (0 I) Jet Black/Dark Ash w/Cloth Seat Trim

Lic. Plate Type Unknown

GVWR 0

Comp/Coll Deductible 0 / 0

OverMileage Charge \$ 0.0400 Per Mile

Tires 0

Loaner Vehicle Not Included

Quote based on estimated annual mileage of 10,000

(Current market and vehicle conditions may also affect value of vehicle)

(Quote is Subject to Customer's Credit Approval)

Notes

Enterprise FM Trust will be the owner of the vehicle covered by this Quote. Enterprise FM Trust (not Enterprise Fleet Management) will be the Lessor of such vehicle under the Master Open - End (Equity) Lease Agreement and shall have all rights and obligations of the Lessor under the Master Open - End (Equity) Lease Agreement with respect to such vehicle.

ALL TAX AND LICENSE FEES TO BE BILLED TO LESSEE AS THEY OCCUR.

Lessee hereby authorizes this vehicle order, agrees to lease the vehicle on the terms set forth herein and in the Master Equity Lease Agreement and agrees that Lessor shall have the right to collect damages in the event Lessee fails or refuses to accept delivery of the ordered vehicle.

Lessee certifies that it intends that more than 50% of the use of the vehicle is to be in a trade or business of the Lessee.

LESSEE City of Calistoga
BY 

TITLE

City Manager

DATE

11/28/17

* INDICATES ITEMS TO BE BILLED ON DELIVERY

¹ Capitalized Price of Vehicle May be Adjusted to Reflect Final Manufacturer's Invoice. Lessee Hereby Assigns to Lessor any Manufacturer Rebates And/Or Manufacturer Incentives Intended for the Lessee, Which Rebates And/Or Incentives Have Been Used By Lessor to Reduce the Capitalized Price of the Vehicle

² Monthly Lease Charge Will Be Adjusted to Reflect the Interest Rate on the Delivery Date (Subject to a Floor)

³ The inclusion herein of references to maintenance fees/services are solely for the administrative convenience of Lessee. Notwithstanding the inclusion of such references in this [Invoice/Schedule/Quote], all such maintenance services are to be performed by Enterprise Fleet Management, Inc., and all such maintenance fees are payable by Lessee solely for the account of Enterprise Fleet Management, Inc., pursuant to that certain separate [Maintenance Agreement] entered into by and between Lessee and Enterprise Fleet Management, Inc.; provided that such maintenance fees are being billed by Enterprise FM Trust, and are payable at the direction of Enterprise FM Trust, solely as an authorized agent for collection on behalf of Enterprise Fleet Management, Inc.



Open-End (Equity) Lease Rate Quote

Quote No: 3691448

Aftermarket Equipment Total

Description	(B)illed or (C)apped	Price
Auto Truck Group Quote #85333: Cab protector - Weather Guard Model 1906-3. White steel punched screen cab protector	C	\$ 476.00
Auto Truck Group Quote #85333: Rhino spray-in bedliner	C	\$ 417.00
Auto Truck Group Quote #85333: LED 6" Amber Roof Beacon. Ecco 7965A, mounted to roof	C	\$ 230.00
Total Aftermarket Equipment Billed		\$ 0.00
Total Aftermarket Equipment Capitalized		\$ 1,123.00
Aftermarket Equipment Total		\$ 1,123.00



Open-End (Equity) Lease Rate Quote

Quote No: 3691448

VEHICLE INFORMATION:

2018 Chevrolet Colorado WT 4x4 Crew Cab 6 ft. box 140.5 in. WB - US

Series ID: 12T43

Pricing Summary:

	INVOICE	MSRP
Base Vehicle	\$ 29,944.00	\$ 31,520.00
Total Options	\$ 957.55	\$ 805.00
Destination Charge	\$ 995.00	\$ 995.00
Total Price	\$ 31,896.55	\$ 33,320.00

SELECTED COLOR:

Exterior: GAZ - (0 P) Summit White

Interior: H2R - (0 I) Jet Black/Dark Ash w/Cloth Seat Trim

SELECTED OPTIONS:

CODE	DESCRIPTION	INVOICE	MSRP
4WT	Preferred Equipment Group 4WT	NC	NC
AH6	Driver 4-Way Power Seat Adjuster	Included	Included
AR7	Front Bucket Seats	STD	STD
B38	Full-Length Black Vinyl Floor Covering	NC	NC
C5J	GVWR: 6,000 lbs (2,722 kg)	STD	STD
G80	Automatic Locking Rear Differential	\$ 295.75	\$ 325.00
GAZ_01	(0 P) Summit White	NC	NC
GU6	3.42 Rear Axle Ratio	STD	STD
H2R_01	(0 I) Jet Black/Dark Ash w/Cloth Seat Trim	NC	NC
IOB	Radio: AM/FM w/7" Diagonal Color Touch Screen	STD	STD
JL1	Integrated Trailer Brake Controller	\$ 209.30	\$ 230.00
LGZ	Engine: 3.6L DI DOHC V6 VVT	STD	STD
M5T	Transmission: 8-Speed Automatic	STD	STD
NQ7	2-Speed Electric Transfer Case	Included	Included
PAINT	Monotone Paint Application	STD	STD
QJJ	Tires: P265/70R16 AS BW	STD	STD
RS2	Wheels: 16" x 7" Ultra Silver Metallic Steel	STD	STD
STD TM	Cloth Seat Trim	STD	STD
TBQ	Ship-Thru: Auto Truck Group	\$ 225.00	\$ 0.00
UQ3	6-Speaker Audio System Feature	Included	Included
WARANT	Fleet Customer Powertrain Limited Warranty	NC	NC
YF5	California State Emissions Requirements	NC	NC
Z82	Heavy-Duty Trailering Package	\$ 227.50	\$ 250.00

CONFIGURED FEATURES:

Body Exterior Features:

Number Of Doors: 4
Rear Cargo Door Type: tailgate
Driver And Passenger Mirror: manual folding side-view door mirrors
Door Handles: black
Front And Rear Bumpers: body-coloured front and rear bumpers with black rub strip
Rear Step Bumper: rear step bumper
Front Tow Hooks: 2 front tow hooks
Box Style: regular
Body Material: galvanized steel/aluminum body material
: class IV trailering with harness, hitch, brake controller
Grille: chrome grille

Convenience Features:

Air Conditioning: manual air conditioning
Power Windows: power windows with driver 1-touch down
Auto Locking: auto-locking doors
Steering Wheel: steering wheel with manual tilting
Day-Night Rearview Mirror: day-night rearview mirror
Front Cupholder: front and rear cupholders
Floor Console: full floor console with covered box
Glove Box: glove box
Driver Door Bin: driver and passenger door bins
Rear Door Bins: rear door bins
Dashboard Storage: dashboard storage
IP Storage: bin instrument-panel storage
Rear Underseat Storage Tray: rear underseat storage tray
Driver Footrest: driver's footrest
Retained Accessory Power: retained accessory power
Power Accessory Outlet: 2 12V DC power outlets

Entertainment Features:

radio: AM/FM stereo with seek-scan
Radio Data System: radio data system
Voice Activated Radio: voice activated radio
Speakers: 6 speakers
1st Row LCD: 1 1st row LCD monitor
Wireless Connectivity: wireless phone connectivity
Antenna: integrated roof antenna

Lighting, Visibility and Instrumentation Features:

Headlamp Type: delay-off aero-composite halogen headlamps
Cab Clearance Lights: cargo bed light
Front Wipers: variable intermittent wipers
Front Windshield Visor Strip: front windshield visor strip
Tinted Windows: light-tinted windows
Dome Light: dome light with fade
Variable IP Lighting: variable instrument panel lighting
Display Type: analog display
Tachometer: tachometer
Low Tire Pressure Warning: tire specific low-tire-pressure warning
Trip Computer: trip computer
Trip Odometer: trip odometer
Water Temp Gauge: water temp. gauge
Clock: in-radio display clock
Systems Monitor: systems monitor
Rear Vision Camera: rear vision camera
Oil Pressure Warning: oil-pressure warning
Water Temp Warning: water-temp. warning
Battery Warning: battery warning
Low Coolant Warning: low-coolant warning
Lights On Warning: lights-on warning
Key in Ignition Warning: key-in-ignition warning

Low Fuel Warning: low-fuel warning
Low Washer Fluid Warning: low-washer-fluid warning
Door Ajar Warning: door-ajar warning
Brake Fluid Warning: brake-fluid warning
Turn Signal On Warning: turn-signal-on warning
Transmission Fluid Temperature Warning: transmission-fluid-temperature warning

Safety And Security:

ABS four-wheel ABS brakes
Number of ABS Channels: 4 ABS channels
Brake Type: four-wheel disc brakes
Vented Disc Brakes: front ventilated disc brakes
Daytime Running Lights: daytime running lights
Spare Tire Type: full-size spare tire
Spare Tire Mount: underbody mounted spare tire w/crankdown
Driver Front Impact Airbag: driver and passenger front-impact airbags
Driver Side Airbag: seat-mounted driver and passenger side-impact airbags
Overhead Airbag: curtain 1st and 2nd row overhead airbag
Occupancy Sensor: front passenger airbag occupancy sensor
Height Adjustable Seatbelts: height adjustable front seatbelts
Seatbelt Pretensioners: front seatbelt pre-tensioners
3Point Rear Centre Seatbelt: 3 point rear centre seatbelt
Side Impact Bars: side-impact bars
Tailgate/Rear Door Lock Type: manual tailgate/rear door lock
Rear Child Safety Locks: rear child safety locks
Ignition Disable: PASS-Key III+ immobilizer
Electronic Stability: StabiliTrak w/Proactive Roll Avoidance electronic stability stability control with anti-roll
Traction Control: ABS and driveline traction control
Front and Rear Headrests: manual adjustable front head restraints
Rear Headrest Control: 2 rear head restraints

Seats And Trim:

Seating Capacity max. seating capacity of 5
Front Bucket Seats: front bucket seats
Number of Driver Seat Adjustments: 6-way driver and passenger seat adjustments
Reclining Driver Seat: manual reclining driver and passenger seats
Driver Height Adjustment: power height-adjustable driver and passenger seats
Driver Fore/Aft: power driver and passenger fore/aft adjustment
Front Centre Armrest Storage: front centre armrest
Rear Seat Type: rear full bench seat
Rear Folding Position: rear seat fold-up cushion
Rear Seat Armrest: rear seat centre armrest
Leather Upholstery: cloth front seat upholstery
Rear Seat Material: vinyl rear seat upholstery
Headliner Material: full cloth headliner
Floor Covering: full vinyl/rubber floor covering
Cabbage Insulator: cabbage insulator
Shift Knob Trim: urethane shift knob

Standard Engine:

Engine 308-hp, 3.6-liter V-6 (regular gas)

Standard Transmission:

Transmission 8-speed automatic w/ OD and auto-manual



1420 Brewster Creek Blvd. - Bartlett, IL 60103
Phone (630) 860-5600 - Fax (630) 445-0030

We put the **work** in **work** trucks.

Quote #85333-R1

Quote Date: 11/3/2017
Page 1 of 1

Company: ENTERPRISE FLEET MANAGEMENT	Quote Expiration Date: 2/1/2018	Reference: COLORADO/NISSAN
Street Address: 9315 OLIVE BLVD	Contact: KRISTY WILHITE	
City, State/Province Zip: SAINT LOUIS, MO	Phone: 925-359-6541	Fax: 877-859-1763

We hereby submit specifications and estimates for:

CAB PROTECTOR	\$476.00
FURNISH AND INSTALL WEATHER GUARD MODEL 1906-3	
WHITE STEEL PUNCHED SCREEN CAB PROTECTOR	
FOR FULL SIZE PICKUP	
LED 6" ROOF BEACON	\$230.00
6" Amber LED Roof Beacon	
Ecco 7965A, mounted to roof	
RHINO SPRAY 6 1/2' BED UTR	\$417.00
SPRAY IN LINER - 6-1/2' Pickup Bed Underrail	

☐ SHIP THRU
ST LOUIS CODE:
(TBQ) COLORADO

NOTE-

Due to ship through high restrictions, components like ladder racks, bulkheads, stake racks etc. may need to be removed for shipping and reinstalled at the end destination. Auto Truck Group will not be responsible for any additional charges.

Submitted By: Chris Hall

Accepted By: _____

Date: _____

Price may vary due to applicable tax or options selected

Make:	Model:	Cab to Axle:
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Open-End (Equity) Lease Rate Quote

Quote No: 3691445

Prepared For: City of Calistoga

Date 11/21/2017
AE/AM KW3

Unit #

Year 2018 **Make** Chevrolet **Model** Colorado

Series WT 4x4 Extended Cab 6 ft. box 128.3 in. WB

Vehicle Order Type Ordered **Term** 60 **State** CA **Customer#** 570047

\$ 31,599.60	Capitalized Price of Vehicle ¹
\$ 0.00	* Sales Tax 0.0000% <u>State</u> CA
\$ 490.89	* Initial License Fee
\$ 0.00	Registration Fee
\$ 0.00	Other: Courtesy Delivery Fee
\$ 0.00	Capitalized Price Reduction
\$ 0.00	Tax on Capitalized Price Reduction
\$ 0.00	Gain Applied From Prior Unit
\$ 0.00	* Tax on Gain On Prior
\$ 0.00	* Security Deposit
\$ 0.00	* Tax on Incentive(Taxable Incentive Total : \$0.00)

\$ 31,599.60 Total Capitalized Amount (Delivered Price)

\$ 473.99 Depreciation Reserve @ 1.5000%

\$ 111.83 Monthly Lease Charge (Based on Interest Rate - Subject to a Floor)²

\$ 585.82 Total Monthly Rental Excluding Additional Services

Additional Fleet Management

Master Policy Enrollment Fees

\$ 0.00 Commercial Automobile Liability Enrollment

Liability Limit \$0.00

\$ 0.00 Physical Damage Management

Comp/Coll Deductible 0 / 0

\$ 35.57 Full Maintenance Program³ Contract Miles 50,000

OverMileage Charge \$ 0.0400 Per Mile

Incl: # Brake Sets (1 set = 1 Axle) 0

Tires 0

Loaner Vehicle Not Included

\$ 35.57 Additional Services SubTotal

\$ 45.40 Sales Tax 7.7500%

State CA

\$ 666.79 Total Monthly Rental Including Additional Services

\$ 3,160.20 Reduced Book Value at 60 Months

\$ 400.00 Service Charge Due at Lease Termination

Quote based on estimated annual mileage of 10,000

(Current market and vehicle conditions may also affect value of vehicle)

(Quote is Subject to Customer's Credit Approval)

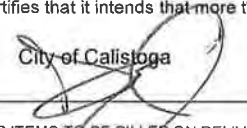
Notes

Enterprise FM Trust will be the owner of the vehicle covered by this Quote. Enterprise FM Trust (not Enterprise Fleet Management) will be the Lessor of such vehicle under the Master Open - End (Equity) Lease Agreement and shall have all rights and obligations of the Lessor under the Master Open - End (Equity) Lease Agreement with respect to such vehicle.

ALL TAX AND LICENSE FEES TO BE BILLED TO LESSEE AS THEY OCCUR.

Lessee hereby authorizes this vehicle order, agrees to lease the vehicle on the terms set forth herein and in the Master Equity Lease Agreement and agrees that Lessor shall have the right to collect damages in the event Lessee fails or refuses to accept delivery of the ordered vehicle.

Lessee certifies that it intends that more than 50% of the use of the vehicle is to be in a trade or business of the Lessee.

LESSEE City of Calistoga
BY 

TITLE City Manager

DATE 11/28/17

* INDICATES ITEMS TO BE BILLED ON DELIVERY

¹ Capitalized Price of Vehicle May be Adjusted to Reflect Final Manufacturer's Invoice. Lessee Hereby Assigns to Lessor any Manufacturer Rebates And/Or Manufacturer Incentives Intended for the Lessee, Which Rebates And/Or Incentives Have Been Used By Lessor to Reduce the Capitalized Price of the Vehicle.

² Monthly Lease Charge Will Be Adjusted to Reflect the Interest Rate on the Delivery Date (Subject to a Floor).

³ The inclusion herein of references to maintenance fees/services are solely for the administrative convenience of Lessee. Notwithstanding the inclusion of such references in this [Invoice/Schedule/Quote], all such maintenance services are to be performed by Enterprise Fleet Management, Inc., and all such maintenance fees are payable by Lessee solely for the account of Enterprise Fleet Management, Inc., pursuant to that certain separate [Maintenance Agreement] entered into by and between Lessee and Enterprise Fleet Management, Inc.; provided that such maintenance fees are being billed by Enterprise FM Trust, and are payable at the direction of Enterprise FM Trust, solely as an authorized agent for collection on behalf of Enterprise Fleet Management, Inc.



Open-End (Equity) Lease Rate Quote

Quote No: 3691445

Aftermarket Equipment Total

Description	(B)illed or (C)apped	Price
Auto Truck Group Quote #86426: LED 6" Roof Beacon EDDO 7965A, mounted to roof	C	\$ 230.00
Auto Truck Group Quote #86426: Rhino spray-in bedliner	C	\$ 417.00
Auto Truck Group Quote #86426: Camper shell. ARE DCU 23" Tall Cab +3". White exterior. Black trim. Side glass tinted windows w/black T locks 63x14. 1/2 rear door with radius tinted window.	C	\$ 2,529.00
Total Aftermarket Equipment Billed		\$ 0.00
Total Aftermarket Equipment Capitalized		\$ 3,176.00
Aftermarket Equipment Total		\$ 3,176.00



Open-End (Equity) Lease Rate Quote

Quote No: 3691445

VEHICLE INFORMATION:

2018 Chevrolet Colorado WT 4x4 Extended Cab 6 ft. box 128.3 in. WB - US

Series ID: 12M53

Pricing Summary:

	INVOICE	MSRP
Base Vehicle	\$ 27,120.00	\$ 28,250.00
Total Options	\$ 2,008.60	\$ 1,960.00
Destination Charge	\$ 995.00	\$ 995.00
Total Price	\$ 30,123.60	\$ 31,205.00

SELECTED COLOR:

Exterior: GAZ - (0 P) Summit White

Interior: H2R - (0 I) Jet Black/Dark Ash w/Cloth Seat Trim

SELECTED OPTIONS:

CODE	DESCRIPTION	INVOICE	MSRP
4WT	Preferred Equipment Group 4WT	NC	NC
5GD	Tow/Haul Mode	Included	Included
AH6	Driver 4-Way Power Seat Adjuster	Included	Included
AR7	Front Bucket Seats	STD	STD
B38	Full-Length Black Vinyl Floor Covering	NC	NC
C4F	GVWR: 5,900 lbs (2,676 kg)	NC	NC
CTT	Trailer Assist Guidelines	Included	Included
G80	Automatic Locking Rear Differential	\$ 295.75	\$ 325.00
GAZ_01	(0 P) Summit White	NC	NC
GU6	3.42 Rear Axle Ratio	NC	NC
H2R_01	(0 I) Jet Black/Dark Ash w/Cloth Seat Trim	NC	NC
IOB	Radio: AM/FM w/7" Diagonal Color Touch Screen	STD	STD
LGZ	Engine: 3.6L DI DOHC V6 VVT	\$ 1,123.85	\$ 1,235.00
M5T	Transmission: 8-Speed Automatic	\$ 136.50	\$ 150.00
NQ7	2-Speed Electric Transfer Case	Included	Included
PAINT	Monotone Paint Application	STD	STD
QJJ	Tires: P265/70R16 AS BW	STD	STD
RS2	Wheels: 16" x 7" Ultra Silver Metallic Steel	STD	STD
S1K	16" x 7" Steel Spare Wheel	Included	Included
STD TM	Cloth Seat Trim	STD	STD
TBQ	Ship-Thru: Auto Truck Group	\$ 225.00	\$ 0.00
UQ3	6-Speaker Audio System Feature	Included	Included
WARANT	Fleet Customer Powertrain Limited Warranty	NC	NC
YF5	California State Emissions Requirements	NC	NC
Z82	Heavy-Duty Trailering Package	\$ 227.50	\$ 250.00
ZJJ	P265/70R16 AS BW Spare Tire	Included	Included

CONFIGURED FEATURES:

Body Exterior Features:

Number Of Doors 4
Rear Driver Door: reverse opening rear passenger doors
Rear Cargo Door Type: tailgate
Driver And Passenger Mirror: manual folding side-view door mirrors
Door Handles: black
Front And Rear Bumpers: body-coloured front and rear bumpers with black rub strip
Rear Step Bumper: rear step bumper
Front Tow Hooks: 2 front tow hooks
Box Style: regular
Body Material: galvanized steel/aluminum body material
: class IV trailering with harness, hitch
Grille: chrome grille

Convenience Features:

Air Conditioning manual air conditioning
Power Windows: power windows with driver 1-touch down
Auto Locking: auto-locking doors
Steering Wheel: steering wheel with manual tilting
Day-Night Rearview Mirror: day-night rearview mirror
Front Cupholder: front and rear cupholders
Floor Console: full floor console with covered box
Glove Box: glove box
Driver Door Bin: driver and passenger door bins
Rear Door Bins: rear door bins
Dashboard Storage: dashboard storage
IP Storage: bin instrument-panel storage
Rear Underseat Storage Tray: rear underseat storage tray
Driver Footrest: driver's footrest
Retained Accessory Power: retained accessory power
Power Accessory Outlet: 2 12V DC power outlets

Entertainment Features:

radio AM/FM stereo with seek-scan
Radio Data System: radio data system
Voice Activated Radio: voice activated radio
Speakers: 6 speakers
1st Row LCD: 1 1st row LCD monitor
Wireless Connectivity: wireless phone connectivity
Antenna: integrated roof antenna

Lighting, Visibility and Instrumentation Features:

Headlamp Type delay-off aero-composite halogen headlamps
Cab Clearance Lights: cargo bed light
Front Wipers: variable intermittent wipers
Front Windshield Visor Strip: front windshield visor strip
Tinted Windows: light-tinted windows
Dome Light: dome light with fade
Variable IP Lighting: variable instrument panel lighting
Display Type: analog display
Tachometer: tachometer
Low Tire Pressure Warning: tire specific low-tire-pressure warning
Trip Computer: trip computer
Trip Odometer: trip odometer
Water Temp Gauge: water temp. gauge
Clock: in-radio display clock
Systems Monitor: systems monitor
Rear Vision Camera: rear vision camera
Oil Pressure Warning: oil-pressure warning
Water Temp Warning: water-temp. warning
Battery Warning: battery warning
Low Coolant Warning: low-coolant warning
Lights On Warning: lights-on warning

Key in Ignition Warning: key-in-ignition warning
Low Fuel Warning: low-fuel warning
Low Washer Fluid Warning: low-washer-fluid warning
Door Ajar Warning: door-ajar warning
Brake Fluid Warning: brake-fluid warning
Turn Signal On Warning: turn-signal-on warning
Transmission Fluid Temperature Warning: transmission-fluid-temperature warning

Safety And Security:

ABS four-wheel ABS brakes
Number of ABS Channels: 4 ABS channels
Brake Type: four-wheel disc brakes
Vented Disc Brakes: front ventilated disc brakes
Daytime Running Lights: daytime running lights
Spare Tire Type: full-size spare tire
Spare Tire Mount: underbody mounted spare tire w/crankdown
Driver Front Impact Airbag: driver and passenger front-impact airbags
Driver Side Airbag: seat-mounted driver and passenger side-impact airbags
Overhead Airbag: curtain 1st and 2nd row overhead airbag
Occupancy Sensor: front passenger airbag occupancy sensor
Height Adjustable Seatbelts: height adjustable front seatbelts
Seatbelt Pretensioners: front seatbelt pre-tensioners
Side Impact Bars: side-impact bars
Tailgate/Rear Door Lock Type: manual tailgate/rear door lock
Ignition Disable: PASS-Key III+ immobilizer
Electronic Stability: StabiliTrak w/Proactive Roll Avoidance electronic stability stability control with anti-roll
Traction Control: ABS and driveline traction control
Front and Rear Headrests: manual adjustable front head restraints
Rear Headrest Control: 2 rear head restraints

Seats And Trim:

Seating Capacity max. seating capacity of 4
Front Bucket Seats: front bucket seats
Number of Driver Seat Adjustments: 6-way driver and passenger seat adjustments
Reclining Driver Seat: manual reclining driver and passenger seats
Driver Height Adjustment: power height-adjustable driver and passenger seats
Driver Fore/Aft: power driver and passenger fore/aft adjustment
Front Centre Armrest Storage: front centre armrest
Rear Seat Type: rear jump seat
Rear Folding Position: rear seat fold-up cushion
Leather Upholstery: cloth front seat upholstery
Rear Seat Material: vinyl rear seat upholstery
Headliner Material: full cloth headliner
Floor Covering: full vinyl/rubber floor covering
Cabbback Insulator: cabbback insulator
Shift Knob Trim: urethane shift knob

Standard Engine:

Engine 308-hp, 3.6-liter V-6 (regular gas)

Standard Transmission:

Transmission 8-speed automatic w/ OD and auto-manual



1420 Brewster Creek Blvd. - Bartlett, IL 60103
Phone (630) 860-5600 - Fax (630) 445-0030

We put the **work** in **work trucks**.

Quote #86426-R2

Quote Date: 11/3/2017
Page 1 of 2

Company: ENTERPRISE FLEET MANAGEMENT	Quote Expiration Date: 2/1/2018	Reference: COLORADO/NISSAN
Street Address: 9315 OLIVE BLVD	Contact: KRISTY WILHITE	
City, State/Province Zip: SAINT LOUIS, MO	Phone: 925-359-6541	Fax: 877-859-1763
We hereby submit specifications and estimates for:		

☐ ARE DCU 23" TALL CAB +3" ADD: \$2,529.00
2017-18 Colorado Shortbed 6.2' or 2017-18 Frontier

White Exterior
Black Trim
Side Glass Tinted windoors with Black T Locks 63x14
1/2 Rear Door with Radius Tinted window
Front Picture Window
No Rack
No Roof Plates
No Toolboxes
Painted to match chassis

☐ ARE V SERIES CAB HIGH CAP ADD: \$1,977.00
2017-18 Colorado Shortbed 6.2' or 2017-18 Frontier

Std Interior
Painted to Match chassis
Side Glass Tinted windoors with Black T Locks 63x14
1/2 Rear Glass Tinted Door with Black T Lock
Front Picture Window
No Rack
No Roof Plates
No Toolboxes
Clamps and Tape

LED 6" ROOF BEACON \$230.00
6" Amber LED Roof Beacon
Ecco 7965A, mounted to roof

RHINO SPRAY 6 1/2' BED UTR \$417.00
SPRAY IN LINER - 6-1/2' Pickup Bed Underrail

☐ SHIP THRU
ST LOUIS CODE: ,



1420 Brewster Creek Blvd. - Bartlett, IL 60103
Phone (630) 860-5600 - Fax (630) 445-0030

We put the **work** in **work trucks**.

Quote #86426-R2

Quote Date: 11/3/2017

Page 2 of 2

(TBQ) COLORADO

NOTE-

Due to ship through high restrictions, components like ladder racks, bulkheads, stake racks etc. may need to be removed for shipping and reinstalled at the end destination. Auto Truck Group will not be responsible for any additional charges.

NOTE:

NISSAN WILL HAVE TO BE DROP SHIPPED AND PICKED UP BY CUSTOMER

Submitted By: Chris Hall

Accepted By: _____

Date: _____

Price may vary due to applicable tax or options selected

Make:	Model:	Cab to Axle:
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Open-End (Equity) Lease Rate Quote

Quote No: 3699661

Prepared For: City of Calistoga

Date 11/21/2017
AE/AM KW3

Unit #

Year 2018 Make Chevrolet Model Colorado

Series WT 4x4 Extended Cab 6 ft. box 128.3 in. WB

Vehicle Order Type Ordered Term 60 State CA Customer# 570047

\$ 30,211.60	Capitalized Price of Vehicle ¹
\$ 0.00	* Sales Tax 0.0000% State CA
\$ 472.85	* Initial License Fee
\$ 0.00	Registration Fee
\$ 0.00	Other: Courtesy Delivery Fee
\$ 0.00	Capitalized Price Reduction
\$ 0.00	Tax on Capitalized Price Reduction
\$ 0.00	Gain Applied From Prior Unit
\$ 0.00	* Tax on Gain On Prior
\$ 0.00	* Security Deposit
\$ 0.00	* Tax on Incentive(Taxable Incentive Total : \$0.00)

All language and acknowledgments contained in the signed quote apply to all vehicles that are ordered under this signed quote.

Order Information

Driver Name

Exterior Color (0 P) Summit White

Interior Color (0 I) Jet Black/Dark Ash w/Cloth Seat Trim

Lic. Plate Type Unknown

GVWR 0

\$ 30,211.60	Total Capitalized Amount (Delivered Price)
\$ 438.07	Depreciation Reserve @ 1.4500%
\$ 109.00	Monthly Lease Charge (Based on Interest Rate - Subject to a Floor) ²

\$ 547.07 Total Monthly Rental Excluding Additional Services

Additional Fleet Management

Master Policy Enrollment Fees

\$ 0.00	Commercial Automobile Liability Enrollment
	Liability Limit \$0.00

\$ 0.00	Physical Damage Management
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Comp/Coll Deductible 0 / 0

\$ 35.57	Full Maintenance Program ³ Contract Miles 50,000
	Incl: # Brake Sets (1 set = 1 Axle) 0

OverMileage Charge \$ 0.0400 Per Mile

Tires 0

Loaner Vehicle Not Included

\$ 35.57 Additional Services SubTotal

\$ 42.40	Sales Tax 7.7500%
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State CA

\$ 625.04 Total Monthly Rental Including Additional Services

\$ 3,927.40	Reduced Book Value at 60 Months
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\$ 400.00	Service Charge Due at Lease Termination
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Quote based on estimated annual mileage of 10,000

(Current market and vehicle conditions may also affect value of vehicle)

(Quote is Subject to Customer's Credit Approval)

Notes

Enterprise FM Trust will be the owner of the vehicle covered by this Quote. Enterprise FM Trust (not Enterprise Fleet Management) will be the Lessor of such vehicle under the Master Open - End (Equity) Lease Agreement and shall have all rights and obligations of the Lessor under the Master Open - End (Equity) Lease Agreement with respect to such vehicle.

ALL TAX AND LICENSE FEES TO BE BILLED TO LESSEE AS THEY OCCUR.

Lessee hereby authorizes this vehicle order, agrees to lease the vehicle on the terms set forth herein and in the Master Equity Lease Agreement and agrees that Lessor shall have the right to collect damages in the event Lessee fails or refuses to accept delivery of the ordered vehicle.

Lessee certifies that it intends that more than 50% of the use of the vehicle is to be in a trade or business of the Lessee.

LESSEE City of Calistoga

BY

TITLE

DATE

* INDICATES ITEMS TO BE BILLED ON DELIVERY.

¹ Capitalized Price of Vehicle May be Adjusted to Reflect Final Manufacturer's Invoice. Lessee Hereby Assigns to Lessor any Manufacturer Rebates And/Or Manufacturer Incentives Intended for the Lessee, Which Rebates And/Or Incentives Have Been Used By Lessor to Reduce the Capitalized Price of the Vehicle.

² Monthly Lease Charge Will Be Adjusted to Reflect the Interest Rate on the Delivery Date (Subject to a Floor)

³ The inclusion herein of references to maintenance fees/services are solely for the administrative convenience of Lessee. Notwithstanding the inclusion of such references in this [Invoice/Schedule/Quote], all such maintenance services are to be performed by Enterprise Fleet Management, Inc., and all such maintenance fees are payable by Lessee solely for the account of Enterprise Fleet Management, Inc., pursuant to that certain separate [Maintenance Agreement] entered into by and between Lessee and Enterprise Fleet Management, Inc.; provided that such maintenance fees are being billed by Enterprise FM Trust, and are payable at the direction of Enterprise FM Trust, solely as an authorized agent for collection on behalf of Enterprise Fleet Management, Inc.



Open-End (Equity) Lease Rate Quote

Quote No: 3699661

Aftermarket Equipment Total

Description	(B)illed or (C)apped	Price
Auto Truck Group Quote #85332: Rhino Spray-in bedliner	C	\$ 417.00
Auto Truck Group Quote #85332: Rack-It Material Rack: Modular 2000. Fork lift loadable, tubular design with black powder coat finish.	C	\$ 1,141.00
Auto Truck Group Quote #85332: LED 6" Amber Roof Beacon. Ecco 7965A, mounted to roof	C	\$ 230.00
Total Aftermarket Equipment Billed		\$ 0.00
Total Aftermarket Equipment Capitalized		\$ 1,788.00
Aftermarket Equipment Total		\$ 1,788.00



Open-End (Equity) Lease Rate Quote

Quote No: 3699661

VEHICLE INFORMATION:

2018 Chevrolet Colorado WT 4x4 Extended Cab 6 ft. box 128.3 in. WB - US

Series ID: 12M53

Pricing Summary:

	INVOICE	MSRP
Base Vehicle	\$ 27,120.00	\$ 28,250.00
Total Options	\$ 2,008.60	\$ 1,960.00
Destination Charge	\$ 995.00	\$ 995.00
Total Price	\$ 30,123.60	\$ 31,205.00

SELECTED COLOR:

Exterior: GAZ - (0 P) Summit White

Interior: H2R - (0 I) Jet Black/Dark Ash w/Cloth Seat Trim

SELECTED OPTIONS:

CODE	DESCRIPTION	INVOICE	MSRP
4WT	Preferred Equipment Group 4WT	NC	NC
5GD	Tow/Haul Mode	Included	Included
AH6	Driver 4-Way Power Seat Adjuster	Included	Included
AR7	Front Bucket Seats	STD	STD
B38	Full-Length Black Vinyl Floor Covering	NC	NC
C4F	GVWR: 5,900 lbs (2,676 kg)	NC	NC
CTT	Trailer Assist Guidelines	Included	Included
G80	Automatic Locking Rear Differential	\$ 295.75	\$ 325.00
GAZ_01	(0 P) Summit White	NC	NC
GU6	3.42 Rear Axle Ratio	NC	NC
H2R_01	(0 I) Jet Black/Dark Ash w/Cloth Seat Trim	NC	NC
IOB	Radio: AM/FM w/7" Diagonal Color Touch Screen	STD	STD
LGZ	Engine: 3.6L DI DOHC V6 VVT	\$ 1,123.85	\$ 1,235.00
M5T	Transmission: 8-Speed Automatic	\$ 136.50	\$ 150.00
NQ7	2-Speed Electric Transfer Case	Included	Included
PAINT	Monotone Paint Application	STD	STD
QJJ	Tires: P265/70R16 AS BW	STD	STD
RS2	Wheels: 16" x 7" Ultra Silver Metallic Steel	STD	STD
S1K	16" x 7" Steel Spare Wheel	Included	Included
STD TM	Cloth Seat Trim	STD	STD
TBQ	Ship-Thru: Auto Truck Group	\$ 225.00	\$ 0.00
UQ3	6-Speaker Audio System Feature	Included	Included
WARANT	Fleet Customer Powertrain Limited Warranty	NC	NC
YF5	California State Emissions Requirements	NC	NC
Z82	Heavy-Duty Trailering Package	\$ 227.50	\$ 250.00
ZJJ	P265/70R16 AS BW Spare Tire	Included	Included

CONFIGURED FEATURES:

Body Exterior Features:

Number Of Doors: 4
Rear Driver Door: reverse opening rear passenger doors
Rear Cargo Door Type: tailgate
Driver And Passenger Mirror: manual folding side-view door mirrors
Door Handles: black
Front And Rear Bumpers: body-coloured front and rear bumpers with black rub strip
Rear Step Bumper: rear step bumper
Front Tow Hooks: 2 front tow hooks
Box Style: regular
Body Material: galvanized steel/aluminum body material
: class IV trailering with harness, hitch
Grille: chrome grille

Convenience Features:

Air Conditioning: manual air conditioning
Power Windows: power windows with driver 1-touch down
Auto Locking: auto-locking doors
Steering Wheel: steering wheel with manual tilting
Day-Night Rearview Mirror: day-night rearview mirror
Front Cupholder: front and rear cupholders
Floor Console: full floor console with covered box
Glove Box: glove box
Driver Door Bin: driver and passenger door bins
Rear Door Bins: rear door bins
Dashboard Storage: dashboard storage
IP Storage: bin instrument-panel storage
Rear Underseat Storage Tray: rear underseat storage tray
Driver Footrest: driver's footrest
Retained Accessory Power: retained accessory power
Power Accessory Outlet: 2 12V DC power outlets

Entertainment Features:

radio: AM/FM stereo with seek-scan
Radio Data System: radio data system
Voice Activated Radio: voice activated radio
Speakers: 6 speakers
1st Row LCD: 1 1st row LCD monitor
Wireless Connectivity: wireless phone connectivity
Antenna: integrated roof antenna

Lighting, Visibility and Instrumentation Features:

Headlamp Type: delay-off aero-composite halogen headlamps
Cab Clearance Lights: cargo bed light
Front Wipers: variable intermittent wipers
Front Windshield Visor Strip: front windshield visor strip
Tinted Windows: light-tinted windows
Dome Light: dome light with fade
Variable IP Lighting: variable instrument panel lighting
Display Type: analog display
Tachometer: tachometer
Low Tire Pressure Warning: tire specific low-tire-pressure warning
Trip Computer: trip computer
Trip Odometer: trip odometer
Water Temp Gauge: water temp. gauge
Clock: in-radio display clock
Systems Monitor: systems monitor
Rear Vision Camera: rear vision camera
Oil Pressure Warning: oil-pressure warning
Water Temp Warning: water-temp. warning
Battery Warning: battery warning
Low Coolant Warning: low-coolant warning
Lights On Warning: lights-on warning

Key in Ignition Warning: key-in-ignition warning
Low Fuel Warning: low-fuel warning
Low Washer Fluid Warning: low-washer-fluid warning
Door Ajar Warning: door-ajar warning
Brake Fluid Warning: brake-fluid warning
Turn Signal On Warning: turn-signal-on warning
Transmission Fluid Temperature Warning: transmission-fluid-temperature warning

Safety And Security:

ABS four-wheel ABS brakes
Number of ABS Channels: 4 ABS channels
Brake Type: four-wheel disc brakes
Vented Disc Brakes: front ventilated disc brakes
Daytime Running Lights: daytime running lights
Spare Tire Type: full-size spare tire
Spare Tire Mount: underbody mounted spare tire w/crankdown
Driver Front Impact Airbag: driver and passenger front-impact airbags
Driver Side Airbag: seat-mounted driver and passenger side-impact airbags
Overhead Airbag: curtain 1st and 2nd row overhead airbag
Occupancy Sensor: front passenger airbag occupancy sensor
Height Adjustable Seatbelts: height adjustable front seatbelts
Seatbelt Pretensioners: front seatbelt pre-tensioners
Side Impact Bars: side-impact bars
Tailgate/Rear Door Lock Type: manual tailgate/rear door lock
Ignition Disable: PASS-Key III+ immobilizer
Electronic Stability: StabiliTrak w/Proactive Roll Avoidance electronic stability stability control with anti-roll
Traction Control: ABS and driveline traction control
Front and Rear Headrests: manual adjustable front head restraints
Rear Headrest Control: 2 rear head restraints

Seats And Trim:

Seating Capacity max. seating capacity of 4
Front Bucket Seats: front bucket seats
Number of Driver Seat Adjustments: 6-way driver and passenger seat adjustments
Reclining Driver Seat: manual reclining driver and passenger seats
Driver Height Adjustment: power height-adjustable driver and passenger seats
Driver Fore/Aft: power driver and passenger fore/aft adjustment
Front Centre Armrest Storage: front centre armrest
Rear Seat Type: rear jump seat
Rear Folding Position: rear seat fold-up cushion
Leather Upholstery: cloth front seat upholstery
Rear Seat Material: vinyl rear seat upholstery
Headliner Material: full cloth headliner
Floor Covering: full vinyl/rubber floor covering
Cabbage Insulator: cabbage insulator
Shift Knob Trim: urethane shift knob

Standard Engine:

Engine 308-hp, 3.6-liter V-6 (regular gas)

Standard Transmission:

Transmission 8-speed automatic w/ OD and auto-manual



1420 Brewster Creek Blvd. - Bartlett, IL 60103
Phone (630) 860-5600 - Fax (630) 445-0030

We put the **work** in **work trucks**.

Quote #85332-R2

Quote Date: 11/9/2017

Page 1 of 1

Company: ENTERPRISE FLEET MANAGEMENT	Quote Expiration Date: 2/7/2018	Reference: COLORADO/NISSAN
Street Address: 9315 OLIVE BLVD	Contact: KRISTY WILHITE	
City, State/Province Zip: SAINT LOUIS, MO	Phone: 925-359-6541	Fax: 877-859-1763

We hereby submit specifications and estimates for:

KARGO MASTER PRO II RACK \$1,045.00
Chevy/Nissan 6'bed
Yellow zinc plated hardware
Cosmetic button head bolts.
Nyloc self locking nut.
1700 LB. cargo capacity
2" dia x .083 thick high tensile strength steel
Zinc Epoxy undercoat
High gloss black marine grade powder coat finish.
Swaged tube joints

LED 6" ROOF BEACON \$230.00
6" Amber LED Roof Beacon
Ecco 7965A, mounted to roof

RHINO SPRAY 6 1/2' BED UTR \$417.00
SPRAY IN LINER 6-1/2' Pickup Bed Underrail

RACK-IT MATERIAL RACK \$1,141.00
Rack-It Modular 2000 material Rack
Fork lift loadable sides
Tubular design with black powder coat finish

☐ SHIP THRU
ST LOUIS CODE:
(TBQ) COLORADO

NOTE-

Due to ship through high restrictions, components like ladder racks, bulkheads, stake racks etc. may need to be removed for shipping and reinstalled at the end destination. Auto Truck Group will not be responsible for any additional charges.

Submitted By: Jeff Shreve

Accepted By: _____

Date: _____

Price may vary due to applicable tax or options selected

Make:	Model:	Cab to Axle:
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Open-End (Equity) Lease Rate Quote

Quote No: 3697619

Prepared For: City of Calistoga

Date 11/21/2017

AE/AM KW3

Unit #

Year 2018 Make Chevrolet Model Silverado 3500HD

Series WT 4x4 Regular Cab 133.6 in. WB DRW

Vehicle Order Type Ordered Term 60 State CA Customer# 570047

\$ 41,055.30	Capitalized Price of Vehicle ¹
\$ 0.00 *	Sales Tax 0.0000% State CA
\$ 710.02 *	Initial License Fee
\$ 0.00	Registration Fee
\$ 0.00	Other: Courtesy Delivery Fee
\$ 0.00	Capitalized Price Reduction
\$ 0.00	Tax on Capitalized Price Reduction
\$ 0.00	Gain Applied From Prior Unit
\$ 0.00 *	Tax on Gain On Prior
\$ 0.00 *	Security Deposit
\$ 0.00 *	Tax on Incentive(Taxable Incentive Total : \$0.00)

All language and acknowledgments contained in the signed quote apply to all vehicles that are ordered under this signed quote.

Order Information

Driver Name

Exterior Color (0 P) Summit White

Interior Color (0 I) Dark Ash/Jet Black w/Cloth Seat Trim

Lic. Plate Type Unknown

GVWR 0

\$ 41,055.30	Total Capitalized Amount (Delivered Price)
\$ 677.41	Depreciation Reserve @ 1.6500%
\$ 143.74	Monthly Lease Charge (Based on Interest Rate - Subject to a Floor) ²

\$ 821.15 Total Monthly Rental Excluding Additional Services

Additional Fleet Management

Master Policy Enrollment Fees

\$ 0.00	Commercial Automobile Liability Enrollment
	Liability Limit \$0.00

\$ 0.00	Physical Damage Management
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Comp/Coll Deductible 0 / 0

\$ 55.38	Full Maintenance Program ³ Contract Miles 50,000
----------	---

OverMileage Charge \$ 0.0400 Per Mile

Incl: # Brake Sets (1 set = 1 Axle) 0

Tires 0

Loaner Vehicle Not Included

\$ 55.38 Additional Services SubTotal

\$ 63.64	Sales Tax 7.7500%
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State CA

\$ 940.17 Total Monthly Rental Including Additional Services

\$ 410.70	Reduced Book Value at 60 Months
-----------	---------------------------------

\$ 400.00	Service Charge Due at Lease Termination
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Quote based on estimated annual mileage of 10,000

(Current market and vehicle conditions may also affect value of vehicle)

(Quote is Subject to Customer's Credit Approval)

Notes

Enterprise FM Trust will be the owner of the vehicle covered by this Quote. Enterprise FM Trust (not Enterprise Fleet Management) will be the Lessor of such vehicle under the Master Open - End (Equity) Lease Agreement and shall have all rights and obligations of the Lessor under the Master Open - End (Equity) Lease Agreement with respect to such vehicle.

ALL TAX AND LICENSE FEES TO BE BILLED TO LESSEE AS THEY OCCUR.

Lessee hereby authorizes this vehicle order, agrees to lease the vehicle on the terms set forth herein and in the Master Equity Lease Agreement and agrees that Lessor shall have the right to collect damages in the event Lessee fails or refuses to accept delivery of the ordered vehicle.

Lessee certifies that it intends that more than 50% of the use of the vehicle is to be in a trade or business of the Lessee.

LESSEE City of Calistoga
BY 

TITLE

City Manager

DATE

11/24/17

* INDICATES ITEMS TO BE BILLED ON DELIVERY.

¹ Capitalized Price of Vehicle May be Adjusted to Reflect Final Manufacturer's Invoice. Lessee Hereby Assigns to Lessor any Manufacturer Rebates And/Or Manufacturer Incentives Intended for the Lessee, Which Rebates And/Or Incentives Have Been Used By Lessor to Reduce the Capitalized Price of the Vehicle.

² Monthly Lease Charge Will Be Adjusted to Reflect the Interest Rate on the Delivery Date (Subject to a Floor).

³ The inclusion herein of references to maintenance fees/services are solely for the administrative convenience of Lessee. Notwithstanding the inclusion of such references in this [Invoice/Schedule/Quote], all such maintenance services are to be performed by Enterprise Fleet Management, Inc., and all such maintenance fees are payable by Lessee solely for the account of Enterprise Fleet Management, Inc., pursuant to that certain separate [Maintenance Agreement] entered into by and between Lessee and Enterprise Fleet Management, Inc.; provided that such maintenance fees are being billed by Enterprise FM Trust, and are payable at the direction of Enterprise FM Trust, solely as an authorized agent for collection on behalf of Enterprise Fleet Management, Inc.



Open-End (Equity) Lease Rate Quote

Quote No: 3697619

Aftermarket Equipment Total

Description	(B)illed or (C)apped	Price
Auto Truck Group Quote #85321: Rhino Spray-in bedliner	C	\$ 417.00
Auto Truck Group Quote #85321: Weather Guard 114-0-01 Cross box; clear aluminum diamond plate. 27" wide.	C	\$ 798.00
Auto Truck Group Quote #85321: Rack-It Material Rack - Modular 2000. Forklift loadable sides, tubular design with black powder coat finish	C	\$ 1,141.00
Auto Truck Group Quote #85321: LED 6" Amber Roof Beacon. Ecco 7965A, mounted to roof	C	\$ 230.00
Total Aftermarket Equipment Billed		\$ 0.00
Total Aftermarket Equipment Capitalized		\$ 2,586.00
Aftermarket Equipment Total		\$ 2,586.00



Open-End (Equity) Lease Rate Quote

Quote No: 3697619

VEHICLE INFORMATION:

2018 Chevrolet Silverado 3500HD WT 4x4 Regular Cab 133.6 in. WB DRW - US

Series ID: CK35903

Pricing Summary:

	INVOICE	MSRP
Base Vehicle	\$ 36,655.30	\$ 38,995.00
Total Options	\$ 9,619.00	\$ 10,400.00
Destination Charge	\$ 1,295.00	\$ 1,295.00
Total Price	\$ 47,569.30	\$ 50,690.00

SELECTED COLOR:

Exterior: GAZ - (0 P) Summit White

Interior: H2R - (0 I) Dark Ash/Jet Black w/Cloth Seat Trim

SELECTED OPTIONS:

CODE	DESCRIPTION	INVOICE	MSRP
1WT	Preferred Equipment Group 1WT	NC	NC
A31	Power Windows	Included	Included
A91	Remote Locking Tailgate	Included	Included
AE7	Front 40/20/40 Reclining Split-Bench Seat	Included	Included
AQQ	Remote Keyless Entry	Included	Included
C99	Frontal Passenger-Side Air Bag Deactivation Switch	Included	Included
CAPDEL	Capped Fuel Fill	Included	Included
CHX	GVWR: 13,025 lbs (5,908 kgs)	NC	NC
DD8	Auto-Dimming Inside Rearview Mirror	Included	Included
DF2	Black High-Visibility Outside Mirrors	Included	Included
DPN	Black Power-Adjustable Heated Outside Mirrors	Included	Included
GAZ_01	(0 P) Summit White	NC	NC
GT4	3.73 Rear Axle Ratio	NC	NC
H2R_02	(0 I) Dark Ash/Jet Black w/Cloth Seat Trim	NC	NC
IOB	Radio: AM/FM w/Chevrolet MyLink	STD	STD
K05	Engine Block Heater	Included	Included
K40	Exhaust Brake	Included	Included
KG4	150 Amps Alternator	Included	Included
L5P	Engine: Duramax 6.6L Turbo-Diesel V8	\$ 8,549.45	\$ 9,395.00
L5PBAT	Dual Heavy-Duty 70 Amp Battery	Included	Included
MW7	Transmission: Allison 1000 6-Speed Automatic w/OD	NC	NC
NK5	Steering Wheel	Included	Included
NQG	Floor-Mounted Shifter Transfer Case	Included	Included
PCR	Fleet Convenience Package	\$ 914.55	\$ 1,005.00
PYW	Wheels: 17" Painted Steel	STD	STD
QQO	Tires: LT235/80R17E AS Highway	STD	STD
SKP	17" x 6.5" Full-Size Steel Spare Wheel	Included	Included
STDTM	Cloth Seat Trim	Included	Included
TRE	Ship-Thru: Fort Wayne Fleet Equipment, Roanoke, IN	\$ 155.00	\$ 0.00
UDC	3.5" Diagonal Monochromatic Display D.I.C.	Included	Included
UQ3	6-Speaker Audio System	Included	Included
VK3	Front License Plate Kit	NC	NC
WARANT	Fleet Customer Powertrain Limited Warranty	NC	NC
YF5	California State Emissions Requirements	NC	NC
Z82	Trailer Equipment	Included	Included
Z85	Standard Suspension Package	STD	STD
ZY1	Solid Paint	STD	STD

CONFIGURED FEATURES:

Body Exterior Features:

Number Of Doors: 2
Rear Cargo Door Type: tailgate
Driver And Passenger Mirror: power remote heated manual folding side-view door mirrors with turn signal indicator
Convex Driver Mirror: convex driver and passenger mirror
Mirror Type: manual extendable trailer mirrors
Door Handles: black
Front And Rear Bumpers: chrome front and rear bumpers with grey rub strip
Rear Step Bumper: rear step bumper
Front Tow Hooks: 2 front tow hooks
Front License Plate Bracket: front license plate bracket
Box Style: regular
Body Material: galvanized steel/aluminum body material
: class IV trailering with harness, hitch, brake controller
Grille: chrome grille

Convenience Features:

Air Conditioning: manual air conditioning
Cruise Control: cruise control with steering wheel controls
Power Windows: power windows with driver and passenger 1-touch down
Remote Keyless Entry: keyfob (all doors) remote keyless entry
Illuminated Entry: illuminated entry
Auto Locking: auto-locking doors
Trunk FOB Controls: keyfob trunk/hatch/door release
Steering Wheel: steering wheel with manual tilting
Day-Night Rearview Mirror: day-night rearview mirror
Auto-dimming Rearview Mirror: auto-dimming rearview mirror
Front Cupholder: front cupholder
Overhead Console: mini overhead console
Glove Box: locking glove box
Driver Door Bin: driver and passenger door bins
IP Storage: covered bin instrument-panel storage
Driver Footrest: driver's footrest
Retained Accessory Power: retained accessory power
Power Accessory Outlet: 2 12V DC power outlets
Smokers Package: ashtray

Entertainment Features:

radio: AM/FM stereo with seek-scan
Audio Theft Deterrent: audio theft deterrent
Voice Activated Radio: voice activated radio
Speakers: 6 speakers
1st Row LCD: 1 1st row LCD monitor
Wireless Connectivity: wireless phone connectivity
Antenna: fixed antenna

Lighting, Visibility and Instrumentation Features:

Headlamp Type: delay-off projector beam halogen headlamps
Cab Clearance Lights: cab clearance lights
Cab Clearance Lights: cargo bed light
Front Wipers: variable intermittent wipers
Tinted Windows: light-tinted windows
Dome Light: dome light with fade
Front Reading Lights: front reading lights
Variable IP Lighting: variable instrument panel lighting
Display Type: analog display
Tachometer: tachometer
Voltmeter: voltmeter
Trip Computer: trip computer
Trip Odometer: trip odometer
Oil Pressure Gauge: oil pressure gauge
Water Temp Gauge: water temp. gauge
Engine Hour Meter: engine hour meter

Clock: in-radio display clock
Systems Monitor: systems monitor
Rear Vision Camera: rear vision camera
Oil Pressure Warning: oil-pressure warning
Water Temp Warning: water-temp. warning
Battery Warning: battery warning
Low Coolant Warning: low-coolant warning
Lights On Warning: lights-on warning
Key in Ignition Warning: key-in-ignition warning
Low Fuel Warning: low-fuel warning
Low Washer Fluid Warning: low-washer-fluid warning
Door Ajar Warning: door-ajar warning
Brake Fluid Warning: brake-fluid warning
Turn Signal On Warning: turn-signal-on warning
Transmission Fluid Temperature Warning: transmission-fluid-temperature warning

Safety And Security:

ABS four-wheel ABS brakes
Number of ABS Channels: 4 ABS channels
Brake Assistance: brake assist
Brake Type: DuraLife four-wheel disc brakes
Vented Disc Brakes: front and rear ventilated disc brakes
Daytime Running Lights: daytime running lights
Spare Tire Type: full-size spare tire
Spare Tire Mount: underbody mounted spare tire w/crankdown
Driver Front Impact Airbag: driver and passenger front-impact airbags
Occupancy Sensor: front passenger airbag occupancy sensor
Height Adjustable Seatbelts: height adjustable front seatbelts
Seatbelt Pretensioners: front seatbelt pre-tensioners
Side Impact Bars: side-impact bars
Perimeter Under Vehicle Lights: remote activated perimeter/approach lights
Tailgate/Rear Door Lock Type: tailgate/rear door lock included with power door locks
Ignition Disable: immobilizer
Panic Alarm: panic alarm
Electronic Stability: electronic stability stability control with anti-roll
Traction Control: ABS and driveline traction control
Front and Rear Headrests: manual adjustable front head restraints

Seats And Trim:

Seating Capacity max. seating capacity of 3
Front Bucket Seats: front split-bench 40-20-40 seats
Number of Driver Seat Adjustments: 4-way driver and passenger seat adjustments
Reclining Driver Seat: manual reclining driver and passenger seats
Driver Lumbar: manual driver and passenger lumbar support
Driver Fore/Aft: manual driver and passenger fore/aft adjustment
Front Centre Armrest Storage: front centre armrest with storage
Leather Upholstery: cloth front seat upholstery
Headliner Material: full cloth headliner
Floor Covering: full vinyl/rubber floor covering
Cabbage Insulator: cabbage insulator
Shift Knob Trim: urethane shift knob

Standard Engine:

Engine 445-hp, 6.6-liter V-8 (diesel)

Standard Transmission:

Transmission 6-speed automatic w/ OD



1420 Brewster Creek Blvd. - Bartlett, IL 60103
Phone (630) 860-5600 - Fax (630) 445-0030

We put the **work** in **work trucks**.

Quote #85321-R2

Quote Date: 11/8/2017
Page 1 of 2

Company: ENTERPRISE FLEET MANAGEMENT	Quote Expiration Date: 2/6/2018	Reference:
Street Address: 9315 OLIVE BLVD	Contact: KRISTY WILHITE	
City, State/Province Zip: SAINT LOUIS, MO	Phone: 925-359-6541	Fax: 877-859-1763

We hereby submit specifications and estimates for:

114-0-01 CROSS BOX;CLEAR \$798.00
(1)WEATHER BOX; CROSS; ALUMINUM; 27" WIDE
114-0-01 ALUM DIAMOND PLATE TOOLBOXES

RACK-IT MATERIAL RACK \$1,141.00
FORD/CHEVY 8' BED
Rack-It Modular 2000 material Rack
Fork lift loadable sides
Tubular design with black powder coat finish

LED 6" ROOF BEACON \$230.00
6" Amber LED Roof Beacon
Ecco 7965A, mounted to roof on Chevy, Mounted on ladder rack for Ford

RHINO SPRAY 6 1/2' BED UTR \$417.00
SPRAY IN LINER 6-1/2' Pickup Bed Underrail

☐ SHIP THRU
FORT WAYNE CODE:
(TRE) REG CAB/DOUBLE CAB SILVERADO

NOTE-

Due to ship through high restrictions, components like ladder racks, bulkheads, stake racks etc. may need to be removed for shipping and reinstalled at the end destination. Auto Truck Group will not be responsible for any additional charges.

☐ SHIP THRU ADD: \$125.00
LOUISVILLE CODE:
(31L D9E)

NOTE-



1420 Brewster Creek Blvd. - Bartlett, IL 60103
Phone (630) 860-5600 - Fax (630) 445-0030

We put the **work** in **work trucks**.

Quote #85321-R2

Quote Date: 11/8/2017

Page 2 of 2

Due to ship through high restrictions, components like ladder racks, bulkheads, stake racks etc. may need to be removed for shipping and reinstalled at the end destination. Auto Truck Group will not be responsible for any additional charges.

Submitted By: Jeff Shreve

Accepted By: _____ Date: _____

Price may vary due to applicable tax or options selected

Make:	Model:	Cab to Axle:
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AGREEMENT NO. 18-35

between

NAPA VALLEY TRANSPORTATION AUTHORITY ("NVTA")

and

CITY OF CALISTOGA (Agreement No. 774)

This **AGREEMENT** (herein after referred to as "Agreement") is made and entered into as of this 6th day of June, 2018 between the NAPA VALLEY TRANSPORTATION AUTHORITY (hereinafter referred to as "NVTA"), and the City of Calistoga, whose mailing address is 1232 Washington Street, CA 94515 (hereinafter referred to as "CITY", and collectively referred to as the "Parties");

RECITALS

WHEREAS, NVTA, through a prior agreement, as amended, with the CITY, has been providing transit services for the City of Calistoga, California;

WHEREAS, the prior agreement, as amended, is scheduled to terminate June 30, 2018; and

WHEREAS, the parties desire to enter into a new Agreement to allow NVTA to provide CITY with the services as set forth in this Agreement, effective July 1, 2018 ("Effective Date").

TERMS

NOW, THEREFORE, the parties do hereby agree as follows:

1. Responsibilities' of the Parties

- A. NVTA shall provide a fiscal year budget to the CITY by the end of June of each year. Budgets can also be located at www.nvta.ca.gov/budgets. From the commencement of service hours in fiscal year 2018-19, the CITY shall pay \$10,000, prorated over four quarterly payments.
- B. NVTA will invoice the CITY each quarter. The CITY will pay each invoice within 60 days.
- C. NVTA is establishing a local contribution capital fund to help cover the cost of new shuttles. The CITY shall contribute \$5,000 annually beginning on July 1, 2018, to NVTA to serve as local matching funds when NVTA purchases new vehicles. The

type and size of the replacement vehicle will be determined by NVTa and CITY staff. The new vehicle will adhere to NVTa's new Vine branding. The fourth quarter shall include the capital contribution of \$5,000.

- D. NVTa shall manage and operate the transit services to serve the general public of the City of Calistoga by providing service hours on days and hours most responsive to public benefit and demand. There will be no service on New Year's Day, Memorial Day, Labor Day, Independence Day, Thanksgiving Day and Christmas Day, unless by special arrangement at least 30 days in advance charged to the CITY separately at NVTa's usual and customary rates for such service.
- E. NVTa will provide the operation, management, marketing activities, and materials, bus stop maintenance, funding, administration and monthly reporting of rides provided for the service. Marketing activities will include pamphlets and schedules delivered to City Hall. Monthly ridership reports will be sent to the City Manager. NVTa assigns the operation of transit services to a third party.

NVTa will provide facilities, vehicles, equipment, maintenance, materials and supplies necessary to accomplish obligations under this Agreement, except as may otherwise be expressly provided for herein after.

- F. NVTa shall operate service as a demand responsive, door-to-door service during service hours within the designated service area as shown in EXHIBIT A. NVTa shall respond to call-in trip requests on a first call-first serve basis. Trips will be grouped for efficiency, and advance reservations beyond the same day will not be accepted. NVTa also operates an automated dispatch system that gives customers the ability to make reservations via an App or Web. The goal of the automated dispatch system is to improve customer service by increasing the predictability of demand-response service.

2. Term of the Agreement

This Agreement will become effective upon the Effective Date and **will be effective until June 30 2021 with two (2) automatic one-year (1) renewals through 2023**, unless amended, extended, or terminated pursuant to the terms of this Agreement.

3. Indemnity

Each party hereto shall indemnify, defend, and hold harmless the other party, its elected or appointed governing body, officers, agents, representatives, and employees from and against any and all actions, claims, demands, losses, damages, liabilities, costs, and expenses, including reasonable attorney's fees and costs arising out of, or resulting from, any act or omission of the indemnifying party in the

performance of this Agreement. The provisions of this Section shall survive the expiration, termination, or assignment of this Agreement.

4. Termination

This Agreement may be terminated as follows:

- A. By mutual agreement of the NVTa and CITY upon such terms and conditions as may be agreed upon.
- B. By either party at any time, without cause, by delivering written notice to the other party at least 90 days in advance of the proposed date of termination.
- C. If the Agreement is terminated pursuant to this Section, neither party may nullify obligations already incurred for performance of services prior to the date of notice or required to be performed through the effective date of termination. Any notice of termination will incorporate necessary transition arrangements, and the parties will comply with all such arrangements. Payments, if any, will be made pursuant to Section 1A, 1B, and 1C of this Agreement and the City will pay the invoice or receive a credit for services rendered through the termination date. This provision shall survive the termination of this Agreement.

5. Entire Agreement

This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

6. Applicable Law

The laws of the United States and the State of California will govern this Agreement.

7. Modifications

No changes, amendments, or alterations to this Agreement will be effective unless in writing and signed by the parties.

8. Insurance

NVTa shall maintain a policy or policies of insurance, with a solvent and responsible company authorized to do business in the State of California, insuring NVTa against loss by reason of injury or damage that may result to persons or property from operations or construction of such transportation service or any other cause connected with the service provided under the term of this Agreement. Said policy shall be a minimum of one million dollars (\$1,000,000) aggregate, including appropriate general liability and auto liability. Said policy shall name CITY as

additional insured and shall provide 30 days prior notice to CITY of the cancellation of any policy during the effective period of this agreement. NVTa shall provide CITY with a copy of the Certificate of Insurance with the additional insured endorsement.

9. Notices

Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this Paragraph.

To NVTa: Executive Director
Napa Valley Transportation
Authority
625 Burnell Street
Napa, CA 94559

To CITY: City Manager
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

10. Access to Records / Retention

NVTa and CITY shall have access to any books, documents, papers and records of each other, which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, NVTa and CITY shall maintain all required records for at least five (5) years after all pending matters are closed.

11. Severability

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

12. Adjustments to Service

Subject to the mutual agreement of the parties, the transit service may be adjusted throughout the term of this contract to better serve the needs of passengers. NVTa or CITY may recommend a change or modification of service criteria. Modifications may include, but are not limited to, adding or deleting service areas; changing service types; modifying or eliminating time points; increasing, decreasing or changing operating hours; and expanding or decreasing vehicle service hours and/or days. . In all cases, the NVTa Executive Director and City Manager or designee will agree to

said changes in writing prior to (a) approval by the NVTA Board, and (b) implementation of the adjustment to Service.

13. License and Permits

NVTA, or its subcontractor, will procure at its expense all licenses and permits as required by federal, state or local laws, rules and regulations for the performance of its obligations under this Agreement, and will comply will all applicable laws, rules or regulations in performing its obligations hereunder.

IN WITNESS WHEREOF, NVTA and City Calistoga have executed this Agreement on the day of June, 2018.

"NVTA"

NVTA, a joint powers authority organized under the laws of the State of California


By 
Kate Miller, Executive Director

"CITY"

City of Calistoga

By 
Dylan Feik, City Manager

ATTEST:


Kathy Flamsen, CITY CLERK

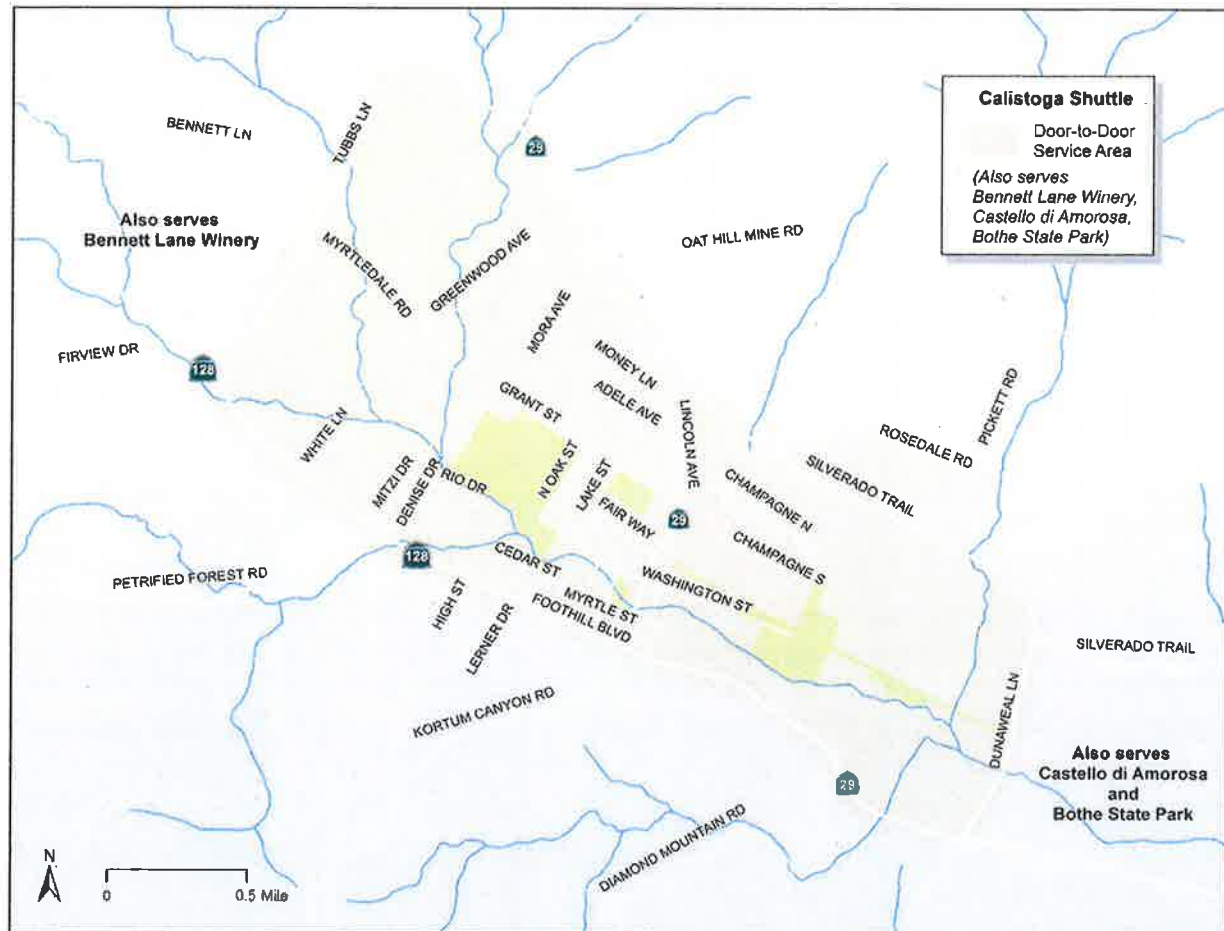
Approved as to Form:

By 
Michelle Kenyon, City Attorney

Approved as to Form:

By 
Vicki A. Clayton, NVTA General Counsel

EXHIBIT A



CONSULTANT SERVICES AGREEMENT

Related to Design Services for Grant Street Reconstruction Plans and Specification

THIS AGREEMENT is entered into as of the 6th day of June 2018, by and between the CITY OF CALISTOGA, herein called the "City," and Coastland Civil Engineering, herein called the "Consultant."

Recitals

WHEREAS, City desires to obtain professional services in connection with the preparation of plans and specifications for reconstruction of Grant Street between Garnett Creek Court and the northern City Limits; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. City. The City Manager or his/her designee, shall represent City for all purposes under this Agreement. The City Manager or designee is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant shall assign Heidi Utterback, P.E. to have overall responsibility for the progress and execution of this Agreement for Consultant.

3. Scope and Performance of Services.

A. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence no sooner than June 6, 2018 and be completed not later than September 1, 2018. Consultant shall

perform its services in accordance with the schedule attached hereto as Exhibit A, and incorporated herein by reference. Any changes to these dates in either this Section 3 or Exhibit A must be approved in writing by the Project Manager.

C. Standard of Quality. City relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit A, and incorporated herein by reference. However, in no event shall the amount City pays Consultant exceed Sixth Thousand Dollars (\$60,000), unless amended. Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

B. Timing of Payment.

Consultant shall submit itemized monthly statements for work performed. City shall make payment, in full, within thirty (30) days after approval of the invoice by the Project Manager.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

D. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

E. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by City and not part of the litigation brought by City against Consultant.

5. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the City. Failure of the Consultant to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate City authorization.

6. Term. This Agreement shall commence upon its execution and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish City with every reasonable opportunity for City to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to City without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement, unless required by law.

9. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists, or experts for services in connection with this Agreement without the prior written approval of the City.

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the City in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. Consultant hereby agrees to defend, indemnify and hold harmless the City, its officers, agents, employees, volunteers, and servants from and against any and all claims, demands, damages, costs, liabilities, or obligations for bodily injury, death and property damage only to the extent that such claims are caused by the negligence, recklessness or willful misconduct of the Consultant, its officers, employees, agents and subcontractors on account of or arising from Consultant's performance of services. For liability arising out of the performance of professional services, the Consultant shall indemnify, hold harmless, and defend the City, its officers, agents, employees, volunteers, and servants from and against any and all claims, demands, damages, costs, liabilities, or obligations to the extent such claims are caused by the negligent, reckless, or intentional acts or omissions of the Consultant, its officers, employees, agents and subcontractors in the performance of professional services under this Agreement. Notwithstanding any contrary provision herein, it is hereby agreed that the Consultant's obligation to defend or to pay the defense costs of the City arising out of the performance of professional services shall only apply if and when, and to the extent that the parties agree on, or a court or other forum of competent jurisdiction has determined, the percentage of Consultant's fault for the liability alleged, in which case Consultant shall be obligated to pay the amount equal to the percentage of its fault that has been actually determined.

13. Consultant Not an Agent of City. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

14. Independent Contractor. It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

15. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Consultant represents and warrants to City that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City business license. The City is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's subconsultants (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's Public Works Department office.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. City Not Responsible. City is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against City, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under Consultant's workers' compensation insurance policy which arise from the work performed by Consultant for the City.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the City, or as required by law.

17. Assignment; Subcontractors; Employees.

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the City's prior written consent. Any assignment without such approval shall be void and, at the City's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder.

No subcontractor of Consultant shall be recognized by the City as such; rather, all subcontractors are deemed to be employees of the Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

18. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of this Agreement, a General Liability insurance policy insuring it and its firm to an amount not less than \$2,000,000 (Two Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Consultant agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than \$1,000,000 (One Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide required coverage for Employers' Liability (Coverage B).

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its officials, officers, agents, employees, and volunteers are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to City all certificates of insurance with original endorsements effecting coverage required by this paragraph. Certificates of such insurance shall be filed with City on or before commencement of performance of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, officers, agents, employees, and volunteers.

(8) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30-days' prior written notice by certified mail, return receipt requested, has been given to City. Current certification of such insurance shall be kept on file with the City Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Consultant shall furnish the City with original Certificate(s) of Insurance verifying Consultant's receipt of the insurance coverage required herein.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon 5-days' written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, City may terminate this

Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee; provided, however, that the City shall deduct from such amount the amount of damages, if any, sustained by City by virtue of the breach of the Agreement by consultant.

C. In the event this Agreement is terminated by City without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the City. Consultant, however, shall not be liable for the City's use of incomplete materials nor for the City's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.

21. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the City and Consultant and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the City and Consultant. All provisions of this Agreement are expressly made conditions.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

24. Time of the Essence. Time is of the essence of this Agreement.

25. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in

writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 72 hours from the time of mailing if mailed as provided in this section.

If to City: City Clerk
City of Calistoga
1232 Washington Street.
Calistoga, CA 94515

If to Consultant: John Wanger
Coastland Engineers
1400 Neotomas Avenue
Santa Rosa, CA 95405

26. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City and all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

C. The City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in the City Manager's office.

27. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

28. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or

national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29. City Not Obligated to Third Parties. The City shall not be obligated or liable for payment hereunder to any party other than the Consultant.

30. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

31. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

32. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

A. Exhibit A: Scope of Work, Schedule of Performance, Compensation

33. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

34. News Releases/Interviews. All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

35. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

36. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: 
Dylan Feik, City Manager

Date: 6/14/18

COASTLAND CIVIL ENGINEERING

By: 
John Wanger, Principal

Date: 6/8/18

ATTEST:

Kathy Flamson

By: 
City Clerk



Paul W. Wade 06/08/18
CEO

EXHIBIT A

Scope of Work, Schedule of Performance, Compensation



May 30, 2018

Mike Kirn
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

Subject: Grant Street/Myrtledale Road Pavement Rehabilitation Project

Dear Mike:

Thank you for providing Coastland the opportunity to submit this proposal for Engineering design services for the Grant Street/Myrtledale Road Pavement Rehabilitation Project. We have reviewed the documentation provided by the City and feel that we have a complete understanding of the City's goals for the project.

PROJECT UNDERSTANDING

The City of Calistoga desires to improve an approximately 2,700 lineal foot long by 22 feet wide section of Grant Street/Myrtledale Road from Garnett Creek Court to the western City limits (Napa River crossing). The current Pavement Condition Index (PCI) is 17 or less. The City is anticipating the rehabilitation will include a new pavement section of 6" Class II aggregate base overlaid with 6" of asphalt concrete. It is anticipated that the pavement rehabilitation will begin beyond the existing curb ramps at Garnett Creek Court and therefore no upgrade of ADA ramps and sidewalk will be required. For purposes of determining the pavement structural section a traffic index (TI) of 9 will be used. An alternate rehabilitation of the pavement, such as cold foam in-place recycling, will be reviewed as part of the design efforts and may be included as a bid alternate. The City would also like a preliminary feasibility assessment of including Class II bike lanes along the project limits.

The project is categorically exempt from CEQA and the City will be preparing the Notice of Determination.

Based on the above understanding of the project, we have put together the following scope of work and estimated fee for your consideration:

SCOPE OF SERVICES

Task 1 – Meetings with City Staff

We will conduct a project kick-off meeting with the City Public Works staff to discuss project details, goals and to coordinate efforts. Also included is one (1) progress review meeting following the 75% submittal.

Task 2 – Background Information

Coastland will assemble all of the available City information pertaining to the project including

Santa Rosa
1400 Neotomas Avenue
Santa Rosa, CA 95405
Tel: 707.571.8005

Auburn
11865 Edgewood Road
Auburn, CA 95603
Tel: 530.888.9929

Pleasant Hill
3478 Buskirk Avenue, Ste. 1000
Pleasant Hill, CA 94523
Tel: 925.233.5333
www.coastlandcivil.com

base maps, as-built drawings, and any additional pertinent information for the project. Coastland staff will conduct a field review, take digital photos and observe existing conditions so we will be able to identify any unusual or special condition that may affect the project design or construction.

Coastland will coordinate with outside utility companies to ensure that all existing facilities, both underground and overhead, are identified accurately during the design phase. This task will include writing letters to PG&E, Cable TV, and AT&T informing them of the project and requesting their facility drawings. Under this task we will follow up with each utility provider by preparing submittal packages to each so they can verify the accuracy of their facilities.

Task 3 – Preliminary Feasibility Assessment for Class II Bike Lanes

We will prepare a preliminary feasibility assessment for including Class II bike lanes along the project length. We will conduct a field reconnaissance to identify potential constraints such as utility poles, utility boxes/appurtenances, trees, drainage and environmental impacts and meet with the City to review and confirm the recommended cross sections (travel, bike and shoulder widths). As part of the preliminary feasibility assessment we will review the possibility of an alternate centerline alignment to achieve the recommended cross section. We will prepare a brief technical memorandum outlining our preliminary findings and summary of potential constraints. Included are two (2) additional meetings with City staff.

Task 4 – Topographic Survey

We have aerial survey mapping information of the project area from our 2005 watermain replacement project. Our subconsultant, Cinquini and Passarino, will conduct a topographic survey of the roadway area to supplement the 2005 aerial survey mapping and provide the necessary level of detail for those pavement rehabilitation improvements. The topographic survey will be at a drawing scale of 1 inch = 20 feet, unless otherwise requested, with a one-foot contour interval. The topographic survey will include the following:

- Topographic survey coverage area will include performing cross sections of the existing roadway pavement at intervals not to exceed 100 feet along Grant Street beginning at the intersection with Garnett Creek Court then northerly along Grant Street/Myrtledale Road to approximately 100 feet north of the Napa River crossing.
- Location of the driveway edges where they intersect with the edge of pavement.
- Topographic survey will include all necessary work to produce a topographic map, including features such as, but not limited to: curb lines, water meters, sewer cleanouts, valves, manholes (including rim, invert and pipe information), utility markings on the pavement, driveway locations, sidewalks, and any other pertinent information that could apply to the project during design.
- Topographic survey will horizontally and vertically relate to the existing mapping. If the existing control is not locatable Cinquini and Passarino will place the project on North American Vertical Datum of 1988 and horizontally on California Coordinate System of 1983, Zone II.
- *A boundary survey is not a part of this scope of work.*

Task 5 – Geotechnical Engineering Coordination

It is our understanding that the City is contracting with RGH for geotechnical engineering services. RGH will drill four (4) boring locations along the subject street to obtain pavement section data and collect bulk samples of subgrade materials for laboratory testing. RGH will provide the City with the results of the pavement cores and soil test data as well as recommendations for pavement rehabilitation and applicable concerns and/or mitigation measures.



Coastland will review the geotechnical report and coordinate with RGH regarding their recommendations on pavement rehabilitation methods and applicable mitigation measures.

Task 6 – 75% Submittal

Upon completion of the background efforts, topographic survey and review of the geotechnical report we will prepare a 75% improvement plan submittal. The plans will consist of a cover sheet, legend/abbreviations sheet, roadway rehabilitation plans, and design detail sheet(s). As part of the submittal, we will prepare an estimate of probable construction costs. Additionally, we will prepare preliminary technical specifications. It is understood that the City will prepare the front end specifications. We will provide the City with two (2) sets of improvement plans, estimate of probable construction costs and preliminary technical specifications for the City to review and comment.

Please note this task doesn't include efforts for inclusion of bike lane improvements and associated roadway widening. If the City desires to move forward with design of the bike lane improvements, we will prepare a revised scope and fee for the City's review.

Task 7 – 100% Submittal

Following City review of the 75% design submittal, we will prepare the 100% submittal. All comments from the 75% submittal review will be addressed.

Coastland's Construction Management Department will perform a constructability review of the contract documents. Through this review, we will help minimize claims and potential change orders. We will provide to the City a memorandum with a summary of the review.

We will provide a PDF check set of the final documents for the City's final review prior to producing final reproducible documents for bidding. We will provide the City with two (2) hard copies of final documents along with electronic files of the technical specs (Word), engineer's estimate (Excel), and plans (PDF).

Bid noticing, document reproduction, bid administration and distribution will be provided by the City.

Please note this task doesn't include efforts for inclusion of bike lane improvements and associated roadway widening. If the City desires to move forward with design of the bike lane improvements, we will prepare a revised scope and fee for the City's review.

Task 8 – Construction Support Services

Coastland will assist the City with the following construction support services:

- Prepare one (1) addendum and respond to bidder inquiries.
- Respond to RFIs (assumes up to three (3) contractor's RFI's)
- Prepare details for contract change order requests (assumes up to two (2) contractor change order requests)

It is our understanding that the City does not need us to attend the preconstruction meeting.

Please note the budget we have calculated for the Construction Support task is based on the assumptions outlined above. If there are more RFI's or change order requests we will prepare a revised scope and fee for the additional review and response efforts.



Tasks Performed by City:

It is understood that the following work will be performed by the City:

- Prepare front end section of the bid documents, the Notice to Bidders and bid advertisement.
- Prepare all staff reports and resolutions for the City Council.
- Submit legal advertisement of the project for bidding.
- Bid document reproduction and distribution to contractors.
- Prepare and file a Notice of Determination in compliance with the California Environmental Quality Act (CEQA).
- Process requests for payment.
- Prepare and file a Notice of Completion.

Optional Tasks

If the City desires, Coastland would be pleased to provide a proposal for the following services:

- Construction management and/or inspection services
- Review of Contractor Submittals
- Record Drawings

SCHEDULE

We understand the City desires to complete the design and bid the project for this year's construction season if possible. However, the City is aware that bid advertisement/award may need to wait until next construction season. Coastland is ready to begin the design efforts immediately upon authorization from the City to proceed. We are committed to allocating appropriate level of staff to meet the completion goals of the project and we will work closely with the City to meet the desired goals.

COST PROPOSAL

Based on our scope of work, we are proposing that the design services associated with this project be completed for a not-to-exceed amount of \$57,819. The amount quoted is assuming that all of the work for this project will fall under the scope of work as previously described. The fee includes all direct expenses (subconsultants, reproducibles, mileage, etc.). If additional work is necessary that falls outside of this scope of work, we can either re-negotiate a new scope of work or provide these services on a time and materials basis per our adopted schedule of hourly rates.



WORK ESTIMATE

Grant/Myrtledale Road Pavement Rehabilitation		Proposal for Professional Engineering Services						City of Calistoga		
Task Information		Billing Classification & Rate						Hour & Cost Information		
Task No.	Task Description	Project Manager	Senior Engineer	Assistant Engineer	CAD Designer	General	Onsite Mgr	Total Hours	Total Cost	Subconsultant/Comments
		\$185	\$155	\$135	\$135	\$90	\$160			
1	Meeting with City Staff									
	Kick-off Meeting (1)	4		4				6	\$1,260	
	Design Progress Meeting (1)	3		3				6	\$960	
	Subtotal							14	\$2,240	
2	Background Information									
	Background Information Gathering	2		2	2			6	\$910	
	Field Measurements and Photo Log	5		6				11	\$1,735	
	Utility Coordination	2		4	6			12	\$1,720	
	Subtotal							29	\$4,365	
3	Preliminary Feasibility Assessment for Class II Bike Lanes									
	Field Reconnaissance	3		3				6	\$960	
	Alternative Centerline Alignment/Technical Memorandum	4		6	12	2	2	26	\$3,940	
	City Meetings (3)	6						6	\$1,110	
	Subtotal							40	\$6,010	
4	Topographic Survey									
	Topographic Survey								\$9,669	C&P
	Coordination with Surveyor	2			4			6	\$910	
	Subtotal							6	\$10,579	
5	Geotech Engineering Coordination									
	Coordination with City's Geotech Consultant	4		2	2			8	\$1,280	
	Subtotal							8	\$1,280	
6	75% Submittal									
	Plans & Details	12		16	56			84	\$11,940	
	Preliminary Specifications	3		8		2		13	\$1,815	
	Preliminary Cost Estimate	2		4	2			6	\$1,160	
	QC Review		4				4	8	\$1,280	
	Subtotal							113	\$16,195	
7	100% Submittal									
	Plans & Details	8		8	40			56	\$7,590	
	Specifications	2		6		2		10	\$1,360	
	Cost Estimate	1		4	2			7	\$995	
	QC Review		4				4	8	\$1,280	
	Subtotal							79	\$11,205	
8	Construction Support Services									
	Addendum/Bid Questions	3			2			5	\$825	
	Respond to RFIs/Change Order Details	12		12	4		2	30	\$4,700	
	Subtotal							35	\$5,525	
	Miscellaneous Costs								\$420	Menge, Repro
Total		76	8	90	132	6	12	284	\$57,619	

We appreciate the opportunity to propose on this work for the City of Calistoga. After you review this information, please let me know if you have any questions.

Sincerely,
COASTLAND

Heidi E. Utterback

Heidi Utterback, PE
Principal / Engineering Design Manager

cc: John Wanger



**AMENDMENT NO. 1
TO THE CONSULTANT SERVICES AGREEMENT
BETWEEN THE CITY OF CALISTOGA AND
COASTLAND ENGINEERS**

**Related to Professional Consulting Services Agreement
For Grant Street Reconstruction Project
(Authorizing Agreement No. 775
Amending Agreement No. 775-01)**

THIS AMENDMENT NO. 1 to the Consultant Services Agreement between the City of Calistoga and Coastland Engineers, to perform engineering design services and preparation of bid documents for the Grant Street Pathway (hereinafter Amendment No. 1) is hereby entered into as of the 17th day of October, 2018, by and between the City of Calistoga, a municipal corporation (hereinafter referred to as "City") and Coastland Engineers, (hereinafter referred to as "Consultant").

RECITALS

WHEREAS, City and Consultant have previously entered into a Consultant Services Agreement to perform specific tasks including but not limited to field surveying, engineering design services and preparation bid documents for the Grant Street Rehabilitation Project, said Agreement being dated June 5, 2018 (hereinafter referred to as "Agreement"); and

WHEREAS, City and Consultant now desire to enter into this Amendment No. 1 to provide additional services related to design services for the Grant Street Pathway from Centennial Circle and the northern City Limits.

NOW, THEREFORE, the parties do hereby mutually agree to amend the Agreement as follows:

1. Under Paragraph 1, Scope of Services, Subsection A is added as follows:

A. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the additional design services related to the Grant Street Pathway as reflected on Consultants proposal data October 5, 2018, attached hereto and made a part of the Agreement.

2. Under Paragraph 3, Compensation and Method of Payment, Subsection A and C are revised as follows:

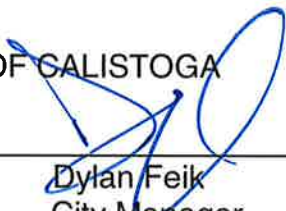
A. Compensation. The compensation to be paid to Consultant shall be at the fees included in the Agreement (\$60,000) and also an additional \$15,250 (Addendum No. 1) for preparation of construction and bid documents for the Grant Street Pathway. However, in no event shall the total amount exceed Seventy-Five


Thousand, Two-Hundred and Fifty Dollars (\$75,250), with such amount including both the original Agreement amount and the additional fees associated with Amendment No. 1. Payment by City under the Agreement or this Amendment shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount of Seventy-Five Thousand, Two-Hundred and Fifty Dollars (\$75,250).

3. Except as specifically modified by Amendment No. 1, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the City and Consultant have executed this Amendment No. 1 as of the date first above written.

CITY OF CALISTOGA
By: 
Dylan Feik
Title: City Manager

CONSULTANT
By: 
Coastland Engineers
Heidi E. Utterback
Corp. Secretary

ATTEST:


Kathy Flamson
City Clerk



COASTLAND

CIVIL ENGINEERING - CONSTRUCTION MANAGEMENT - BUILDING DEPARTMENT SERVICES

October 5, 2018

Mike Kirn
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

**Subject: Grant Street/Myrtledale Road Pavement Rehabilitation Project
Amendment No. 1 Proposal**

Dear Mike:

We are pleased to provide you with this amendment proposal for the design services of the proposed pathway south of the Grant Street/Myrtledale Road Rehabilitation limits.

PROJECT UNDERSTANDING

The City of Calistoga desires to install a noncontiguous 5' wide asphalt concrete pathway south of Grant Street/Myrtledale within the limits of the roadway rehabilitation project. The proposed pathway will start at the existing asphalt concrete sidewalk on the south side of Grant Street approximately 200' east of Garnet Creek Court and continue westerly to just east of the Napa River Bridge. The pathway will be set back typically 7 feet from the edge of the paved roadway but may need to meander somewhat to avoid existing encroachments, improvements, utilities and trees to the greatest extent possible. Where meandering of the pathway is necessary, the City desires the following provisions:

- 4' minimum separation distance from edge of pavement to pathway
- 2" minimum separation from westerly edge of ROW to the pathway
- 3' minimum separation from encroachments/improvements/utilities/trees etc.

The pathway slopes shall meet ADA requirements.

Based on the above understanding of the project, we have put together the following scope of work and estimated fee for your consideration. For clarity, the tasks below follow the original scope of work.

SCOPE OF SERVICES

Task 1 – Meetings with City Staff

We will meet with the City following the 30% submittal of the pathway plans.

Santa Rosa
1400 Neotomas Avenue
Santa Rosa, CA 95405
Tel: 707.571.8005

Auburn
11865 Edgewood Road
Auburn, CA 95603
Tel: 530.888.9929

Pleasant Hill
3478 Buskirk Avenue, Ste. 1000
Pleasant Hill, CA 94523
Tel: 925.233.5333
www.coastlandcivil.com

Task 2 – Background Information

No additional work under this task.

Task 3 – Preliminary Feasibility Assessment for Class II Bike Lanes

No additional work under this task.

Task 4 – Topographic Survey

No additional work under this task.

Task 5 – Geotechnical Engineering Coordination

No additional work under this task.

Task 6A – 30% Pathway Plans (NEW TASK)

Upon completion of the background efforts and topographic survey, which has already been completed to date, we will prepare 30% pathway plans. Plans will include the horizontal layout of the proposed pathway, typical cross sections and indication of any necessary tree removals and/or utility relocations/adjustments.

Task 6 – 75% Submittal

We will prepare 75% design level improvements of the pathway and incorporate into the plan set for the roadway rehabilitation improvements. The pathway plans will plan and profile sheets, grading plans and cross sections. We will prepare an estimate of probable construction costs and preliminary technical specifications for the pathway improvements.

Task 7 – 100% Submittal

Following City review of the 75% design submittal, we will prepare the 100% submittal. For the pathway improvements. All comments from the 75% submittal review will be addressed. The pathway plans will be combined with the road rehabilitation PS&E documents.

Task 8 – Construction Support Services

No additional work under this task.

Tasks Performed by City:

It is understood that the City would obtain any necessary environmental clearances for the pathway improvements.

COST PROPOSAL

Based on our scope of work, we are proposing that the design services associated with above described amendment work be completed for a not-to-exceed amount of \$15,250. The amount quoted is assuming that all of the work for this project will fall under the scope of work as previously described. The fee includes all direct expenses (reproducibles, mileage, etc.). If additional work is necessary that falls outside of this scope of work, we can either re-negotiate a new scope of work or provide these services on a time and materials basis per our adopted schedule of hourly rates.



WORK ESTIMATE - AMENDMENT NO. 1

Grant/Myrtledale Road Pavement Rehabilitation		Proposal for Professional Engineering Services						City of Calistoga		
Task Information		Billing Classification & Rate						Hour & Cost Information		
Task No.	Task Description	Project Manager \$185	Senior Engineer \$155	Assistant Engineer \$135	CAD Designer \$135	Clerical \$90	Const. Mgr \$160	Total Hours	Total Cost	Subconsultant/Comments
1	Meeting with City Staff									
	Kick-off Meeting (1)							0	\$0	
	Design Progress Meeting (1)	3						3	\$555	
	Subtotal							3	\$555	
2	Background Information									
	Background Information Gathering							0	\$0	
	Field Measurements and Photo Log							0	\$0	
	Utility Coordination							0	\$0	
	Subtotal							0	\$0	
3	Preliminary Feasibility Assessment for Class II Bike Lanes									
	Field Reconnaissance							0	\$0	
	Alternative Centerline Alignment/Technical Memorandum							0	\$0	
	City Meetings (3)							0	\$0	
	Subtotal							0	\$0	
4	Topographic Survey									
	Topographic Survey									C&P
	Coordination with Surveyor							0	\$0	
	Subtotal							0	\$0	
5	Geotech Engineering Coordination									
	Coordination with City's Geotech Consultant							0	\$0	
	Subtotal							0	\$0	
6A	30% Pathway Plans									
	30% Pathway Plans	2		2	16			20	\$2,800	
	Subtotal							20	\$2,800	
6	75% Submittal									
	Plans & Details	4		4	40			48	\$6,680	
	Preliminary Specifications	1		2				3	\$455	
	Preliminary Cost Estimate	1		2	1			4	\$590	
	QC Review		1				1	2	\$315	
	Subtotal							57	\$8,040	
7	100% Submittal									
	Plans & Details	2		2	16			20	\$2,800	
	Specifications	1		1				2	\$320	
	Cost Estimate			1	1			2	\$270	
	QC Review		1				1	2	\$315	
	Subtotal							26	\$3,705	
8	Construction Support Services									
	Addendum/Bid Questions							0	\$0	
	Respond to RFIs/Change Order Details							0	\$0	
	Subtotal							0	\$0	
	Miscellaneous Costs								\$150	Mileage, Repro
	Total	14	2	14	74	0	2	106	\$15,250	

Please let me know if you have any questions.

Sincerely,

Heidi E. Utterback

Heidi Utterback, PE
Principal / Engineering Design Manager



PROFESSIONAL SERVICES AGREEMENT
Fair Housing Napa Valley
for Fair Housing Support Services during FY 2018-2019

Authorizing Agreement No. 776

THIS AGREEMENT is entered into as of this 19 day of June, 2019, by and between the CITY OF CALISTOGA herein called the "City", and FAIR HOUSING NAPA VALLEY, herein called the "Consultant".

Recitals

WHEREAS, City desires to obtain fair housing support services; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by reference.

2. Time of Performance. The services of Consultant shall be provided between July 1, 2018 and June 30, 2019. Any changes to these dates shall be approved in writing by the City Manager or his or her designee.

3. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall in no event exceed twelve thousand dollars (\$12,000). Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

B. Timing of Payment. Billing for said services may be made on an annual basis. City shall review Consultant's statement and pay Consultant for services rendered within 30 days of receipt of the Consultant's statement.

C. Changes in Compensation. Consultant will not undertake any work for which the City is obligated to pay that will incur costs in excess of the amount of twelve thousand dollars (\$12,000) during the term of this Agreement.

D. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's report. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates.

4. Interest of Consultant.

A. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

5. Interest of Members and Employees of City. No member of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his/her personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.

6. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

7. Indemnification of City. Consultant hereby agrees to defend, indemnify and save harmless the City, its officers, agents, employees and servants, from and against any and all claims, liability or obligations based on negligence or willful misconduct brought on account of or arising out of any acts, errors or omissions of Consultant undertaken pursuant to this Agreement. The City has no liability or responsibility for any accident, loss or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Consultant Not an Agent of City. City retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

9. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

10. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City of Calistoga business license.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of this Agreement.

C. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7.

D. City Not Responsible. The City is not responsible or liable for Consultant's failure to comply with any and all of said requirements.

11. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by City, or as required by law.

12. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of the contract, a General Liability insurance policy insuring him/her and his/her firm to an amount not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage.

(2) Consultant agrees to have and maintain for the duration of the contract an Automobile Liability insurance policy insuring him/her and his/her staff to an amount not less than Five Hundred Thousand Dollars (\$500,000) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's operations under this Agreement, whether

such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than One Million Dollars (\$1,000,000) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide coverage for One Million Dollars (\$1,000,000) Employers' Liability (Coverage B).

(c) Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officials, officers, employees, volunteers, and agents.

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its employees, officers, agents and contractors are hereby added as additional insureds, but only as respects work done by, for on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to the City all certificates of insurance with original endorsements affecting coverage required by this paragraph. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

B. General Liability.

(1) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

(2) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. All Coverages. Each insurance policy required in this item shall provide that coverage shall not be canceled, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the City. Current certification

of such insurance shall be kept on file with the City Secretary at all times during the term of this Agreement.

D. Acceptability of Insurers. Insurance is to be placed with insurers approved by the California Department of Insurance with a Best/Es rating of no less than A:VII.

E. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

13. Assignment Prohibited. Neither the City nor Consultant may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

14. Termination of Agreement.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon written notice to the Consultant upon 90 days' written notice. Consultant may terminate this Agreement upon 90 days' written notice.

B. If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

C. Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the City, become its sole property and shall, at Consultant's expense, be delivered to the City or to any party it may so designate.

D. In the event termination is without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that Consultant shall be entitled to compensation for work in progress at the time of termination.

15. Amendment. This Agreement constitutes the complete and exclusive statement of the Agreement to City and Consultant. It may be amended or extended from time to time by written agreement of the parties hereto.

16. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

17. Written Notification. Any notice, demand, request, consent, approval or communications that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth

herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Calistoga
City Manager
1232 Washington Street
Calistoga, CA 94515

If to Consultant: Fair Housing Napa Valley
Pablo Zatarain, Executive Director
1804 Soscol Avenue, Suite 203
Napa, CA 94559

18. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

B. Consultant shall maintain all documents and records, which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

20. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or

orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

21. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

22. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

23. News Releases/Interviews: All Consultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

24. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: _____


Dylan Feik
City Manager

CONSULTANT

By: _____


Pablo Zatarain
Executive Director
Fair Housing Napa Valley

ATTEST


Kathy Flamson
City Clerk

PROFESSIONAL SERVICES AGREEMENT
Boys & Girls Club of St. Helena and Calistoga for Calistoga Teen Center
Programs and Support Services to
Members of the Calistoga Community

Authorizing Agreement No. 777

THIS AGREEMENT is entered into as of this 19th day of June 2018, by and between the CITY OF CALISTOGA herein called the "City", and BOYS & GIRLS CLUB OF ST. HELENA AND CALISTOGA, herein called the "Consultant."

Recitals

WHEREAS, City desires to obtain professional or subcontractor services and/or advice in connection with a youth development program; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement; and

WHEREAS, the City desires to provide youth programs at free and/or reduced costs to improve the overall quality of life for members of the community.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by reference.

2. Time of Performance. The services of Consultant are to commence no sooner than July 1, 2018 and be completed no later than June 30, 2019. Any changes to these dates must be approved in writing by the City Manager or his or her designee. This contract may be approved annually by the mutual consent of both parties and following budget appropriation from the City of Calistoga.

3. Location of Performance. The Consultant shall provide the services outlined in Exhibit "A" within the City of Calistoga primarily benefitting residents of the City of Calistoga, or persons residing within the district boundaries of the Calistoga Joint Unified School District.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall in no event exceed Forty Thousand Dollars (\$40,000). Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment. The City may request any information or documentation from Consultant to verify services are being performed according to terms located herein.

B. Timing of Payment. Billing for said services may be made on a biannual basis. City shall review Consultant's statement and pay Consultant for services rendered within thirty (30) days of receipt of the Consultant's statement.

C. Changes in Compensation. Consultant will not undertake any work for which the City is obligated to pay that will incur costs in excess of the amount of Forty Thousand Dollars (\$40,000) during the term of this Agreement.

D. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's report. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates.

4. Interest of Consultant.

A. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

5. Interest of Members and Employees of City. No member of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his/her personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.

6. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

7. Indemnification of City. Consultant hereby agrees to defend, indemnify and save harmless the City, its officers, agents, employees and servants, from and against any and all claims, liability or obligations based on negligence or willful misconduct brought on account of or arising out of any acts, errors or omissions of Consultant undertaken pursuant to this Agreement. The City has no liability or responsibility for any accident, loss or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Consultant Not an Agent of City. City retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

9. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

10. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that

Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City of Calistoga business license.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of this Agreement.

C. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7.

D. City Not Responsible. The City is not responsible or liable for Consultant's failure to comply with any and all of said requirements.

11. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by City, or as required by law.

12. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of the contract, a General Liability insurance policy insuring him/her and his/her firm to an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage.

(2) Consultant agrees to have and maintain for the duration of the contract an Automobile Liability insurance policy insuring him/her and his/her staff to an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than One Million Dollars (\$1,000,000.00) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide coverage for One Million Dollars (\$1,000,000.00) Employers' Liability (Coverage B).

(c) Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officials, officers, employees, volunteers, and agents.

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its employees, officers, agents and contractors are hereby added as additional insureds, but only as respects work done by, for on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to the City all certificates of insurance with original endorsements affecting coverage required by this paragraph. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

B. General Liability.

(1) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

(2) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. All Coverages. Each insurance policy required in this item shall provide that coverage shall not be canceled, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the City. Current certification of such insurance shall be kept on file with the City Secretary at all times during the term of this Agreement.

D. Acceptability of Insurers. Insurance is to be placed with insurers approved by the California Department of Insurance with a Best/Es rating of no less than A:VII.

E. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

13. Assignment Prohibited. Neither the City nor Consultant may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

14. Termination of Agreement.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon written notice to the Consultant upon 30 days' written notice. Consultant may terminate this Agreement upon 30 days' written notice.

B. If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

C. Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the City, become its sole property and shall, at Consultant's expense, be delivered to the City or to any party it may so designate.

D. In the event termination is without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the

time of payment; provided, however, that Consultant shall be entitled to compensation for work in progress at the time of termination.

15. Amendment. This Agreement constitutes the complete and exclusive statement of the Agreement to City and Consultant. It may be amended or extended from time to time by written agreement of the parties hereto.

16. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

17. Time of the Essence. Time is of the essence of this Agreement, however, the Consultant shall not be held responsible for delays caused by acts outside of Consultant's control.

18. Written Notification. Any notice, demand, request, consent, approval or communications that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Calistoga
Dylan Feik, City Manager
1232 Washington Street
Calistoga, CA 94515

If to Consultant: Boys & Girls Club of St. Helena and Calistoga
Trent Yaconelli, Executive Director
P.O. Box 213
1420 Tainter Street
St. Helena, CA 94574

19. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a

minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

B. Consultant shall maintain all documents and records, which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

20. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

21. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

22. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the

parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

23. News Releases/Interviews: All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

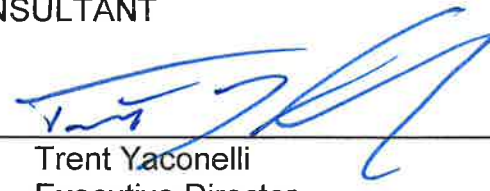
24. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: 
Dylan Feik
Title: City Manager

CONSULTANT

By: 
Trent Yaconelli
Executive Director

ATTEST:


Kathy Flannan, City Clerk

**Scope of Work
July 2018-June 2019**

For the 2018-2019 fiscal year, we propose the following scope of work:

- 1. The Calistoga Teen Center will provide broad academic, recreation, and enrichment services to teenage students from the City of Calistoga. Services include focused and developmentally appropriate programs in Boys & Girls Clubs of St Helena and Calistoga's Core Areas of Impact- The Arts, STEM, Healthy Lifestyles, Character Development, and Academic Success. Specific programming includes a weekly art program, an internal leadership club, weekly healthy cooking class, weekly open gym, and volunteer work in the community.**
- 2. The Calistoga Teen Center aims to reach at minimum 100 unique teenage students per month, and has a focused outreach towards low-income and/or at-risk students. Over 85% of our current population is considered low-income. Outreach to these students includes on-campus visits, monthly program calendars, flyers and ads posted locally, and collaboration with other Calistoga agencies that ensure each student in need is served.**
- 3. During the summer of 2018, The Calistoga Teen Center will provide no less than 4 college tours and 2 career tours at no cost to Club Members, including an overnight trip to UC Santa Cruz and Cal State Monterey Bay. Additional guest speakers and college preparatory workshops will be provided monthly. The Calistoga Teen Center will also be facilitating large-group volunteer trips, monthly Teen Nights at the Calistoga Clubhouse, and monthly pool events in collaboration with the City of Calistoga Parks & Rec Department.**
- 4. During the 2018 school year, the Calistoga Teen Center hosted a Teen Retreat in Ashland Oregon, free to all attending students. 21 Students took part in activities and exercises that self-reflection, gratitude, and conversations around their life goals. The Calistoga Teen Center will host another retreat in the 2018-2019 school year.**

**PROFESSIONAL SERVICES AGREEMENT
FOR PUBLICATION OF LEGAL NOTICES
AND LEGAL ADVERTISEMENTS**

Authorizing Agreement No. 778

THIS AGREEMENT is entered into as of the 1st day of July 2018, by and between the CITY OF CALISTOGA herein called the "City", and The Calistoga Tribune herein called the "Service Provider".

Recitals

WHEREAS, City desires to obtain services for the publication of legal advertisements; and

WHEREAS, Service Provider hereby warrants to the City that Service Provider is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Service Provider pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Service Provider shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by reference.

2. Time of Performance. The services of Service Provider are to commence no sooner than July 1, 2018 and, subject to City Council approval, be completed not later than June 30, 2018. Any changes to these dates must be approved in writing by the City Manager or his or her designee.

3. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Service Provider, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit "A". However, in no event shall the amount exceed Fifteen Thousand Dollars (\$15,000). Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

B. Timing of Payment. Billing for said services may be made on a monthly basis. City shall review Service Provider's statement and pay Service Provider for services rendered within 30 days of receipt of the Service Provider's statement.

C. Changes in Compensation. Service Provider will not undertake any work that will incur costs in excess of the amount of Fifteen Thousand Dollars (\$15,000).

D. Litigation Support. Service Provider agrees to testify at City's request if litigation is brought against City in connection with Service Provider's report. Unless the action is brought by Service Provider or is based upon Service Provider's negligence, City will compensate Service Provider for the preparation and the testimony at Service Provider's standard hourly rates.

4. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Service Provider, its officers, employees and agents in the course of implementing this Agreement, except working notes and internal documents, shall become the sole property of the City upon payment to Service Provider for such work, and the City shall have the sole right to use such materials in its sole discretion without further compensation to Service Provider or to any other party. Any modifications made by the City to any of the Service Provider's documents or any partial use or reuse of the documents without the express written consent of the Service Provider will be at the City's sole risk and without liability to the Service Provider and the City shall indemnify, defend, and hold harmless from all claims, damages, losses and expenses including, but not limited to, attorney's fees resulting therefrom.

5. Employment of Other Service Providers, Specialists or Experts. Service Provider will not employ or otherwise incur an obligation to pay other Service Providers, specialists or experts for services in connection with this Agreement without the prior written approval of the City.

6. Interest of Service Provider.

A. Service Provider (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Service Provider's services hereunder. Service Provider further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

Service Provider is not a designated employee within the meaning of the Political Reform Act because Service Provider:

(1) will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the

control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

7. Interest of Members and Employees of City. No member of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his/her personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.

8. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Service Provider or otherwise in the event of any default or breach of the City, or for any amount which may become due to Service Provider or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

9. Indemnification of City. Service Provider hereby agrees to defend, indemnify and save harmless the City, its officers, agents, employees and servants, from and against any and all claims, liability or obligations based on negligence or willful misconduct brought on account of or arising out of any acts, errors or omissions of Service Provider undertaken pursuant to this Agreement. The City has no liability or responsibility for any accident, loss or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Service Provider's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

10. Service Provider Not an Agent of City. City retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement. Service Provider, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

11. Independent Contractor. It is understood that Service Provider, in the performance of the work and services agreed to be performed by Service Provider, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Service Provider shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Service Provider hereby expressly waives any claim it may have to any such rights.

12. Compliance with Laws.

A. General. Service Provider shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Service Provider represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for Service Provider to practice its profession. Service Provider represents and warrants to City that Service Provider shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Service Provider to practice its profession. Service Provider shall maintain a City of Calistoga business license.

B. Workers' Compensation. Service Provider certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Service Provider certifies that it will comply with such provisions before commencing performance of this Agreement.

C. Injury and Illness Prevention Program. Service Provider certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7, which requires every employer to adopt a written injury and illness prevention program.

D. City Not Responsible. The City is not responsible or liable for Service Provider's failure to comply with any and all of said requirements.

13. Confidential Information. All data, documents, discussions or other information developed or received by or for Service Provider in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by City, or as required by law.

14. Insurance.

A. Minimum Scope of Insurance.

(1) Service Provider agrees to have and maintain, for the duration of the contract, a General Liability insurance policy insuring him/her and his/her firm to an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage.

(2) Service Provider agrees to have and maintain for the duration of the contract an Automobile Liability insurance policy insuring him/her and his/her staff to an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident for bodily injury and property damage.

(3) Service Provider shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Service Provider's operations under this Agreement, whether such

operations be by Service Provider or by its employees, subcontractors, or subService Providers. The amount of this insurance shall not be less than One Million Dollars (\$1,000,000.00) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Service Provider:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide coverage for One Hundred Thousand Dollars (\$100,000.00) Employers' Liability (Coverage B).

(c) A waiver of subrogation shall be required for the Worker's Compensation in favor of the City of Calistoga.

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its employees, officers, agents and contractors are hereby added as additional insureds, but only as respects work done by, for on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Service Provider shall provide to the City all certificates of insurance with original endorsements affecting coverage required by this paragraph. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

B. General Liability.

(1) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

(2) Service Provider's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. All Coverages. Each insurance policy required in this item shall provide that coverage shall not be canceled, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the City. Current certification of such insurance shall be kept on file with the City Clerk at all times during the term of this Agreement.

D. Acceptability of Insurers. Insurance is to be placed with insurers approved by the California Department of Insurance with a Best/Es rating of no less than A:VII.

E. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Service Provider shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

15. Assignment Prohibited. Neither the City nor Service Provider may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

16. Termination of Agreement.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon written notice to the Service Provider upon 5 days' written notice. Service Provider may terminate this Agreement upon 30 days' written notice.

B. If Service Provider fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

C. Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the City, become its sole property and shall, at Service Provider's expense, be delivered to the City or to any party it may so designate.

D. In the event termination is without cause, Service Provider shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that Service Provider shall be entitled to compensation for work in progress at the time of termination.

17. Amendment. This Agreement constitutes the complete and exclusive statement of the Agreement to City and Service Provider. It may be amended or extended from time to time by written agreement of the parties hereto.

18. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

19. Time of the Essence. Time is of the essence of this Agreement, however, the Service Provider shall not be held responsible for delays caused by acts outside of Service Provider's control.

20. Written Notification. Any notice, demand, request, consent, approval or communications that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth hereinbelow. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City Of Calistoga
City Manager
1232 Washington Street
Calistoga, CA 94515

If to Service Provider: Calistoga Tribune
Pat Hampton, Publisher
1007 Washington Street
Calistoga, CA 94515

21. Service Provider's Books and Records.

A. Service Provider shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Service Provider to this Agreement.

B. Service Provider shall maintain all documents and records, which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Service Provider's address indicated for receipt of notices in this Agreement.

D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Service Provider's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Service Provider, Service Provider's representatives, or Service Provider's successor-in-interest.

22. Equal Employment Opportunity. Service Provider is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Service Provider will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Service Provider will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Service Provider further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

23. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

24. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

25. News Releases/Interviews: All Service Provider and Sub-Service Provider news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

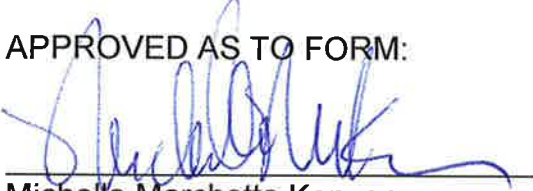
26. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

IN WITNESS WHEREOF, the City and Service Provider have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: 
Dylan Feik
City Manager

APPROVED AS TO FORM:


Michelle Marchetta Kenyon
City Attorney

THE CALISTOGA TRIBUNE

By: 
J. Rat Hampton

ATTEST


Kathy Flanson, City Clerk

Exhibit A

Scope of Services

Exhibit A

Scope of Services

1. Newspaper shall publish legal notices and legal advertisements for and on request of City and shall provide City with written proof of publication of each item within one week of the last publication of the item. Written proof of publication shall be in a form acceptable to the City Clerk.
2. The term "legal notices" refers to legal notices that the law requires to be published and that are identified as legal notices on the form sent by City to Contractor, requesting publication. Legal notices will be published in the legal notice section of the newspaper. Unless otherwise directed by the City, the Contractor shall publish all legal advertising using a standard seven (7) point type with seven (7) leading at eight (8) pica width (column). City may require modification of the type size or style. Contractor may also change the type size and/or style with permission of the City employee requesting the publication. Contractor shall use the least amount of space possible to present a readable notice.
3. The term "general advertisements" refers to legal notices that the law requires to be published and that are identified as legal notices on the form sent by City to Newspaper, requesting publication. Legal advertisements are legal notices published with a border and City logo in the legal notice section of the newspaper. Newspaper may print in other sections of the newspaper with the permission of the City employee requesting the publication. Contractor shall publish legal advertisements using a standard 8-point type for the body and 12-point for the heading. City may require modification of the type size or style. Contractor may also change the type size and/or style with permission of the City employee requesting the publication. Newspaper shall use the least amount of space possible to present a readable advertisement.

RESOLUTION NO. 2018-061

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, AWARDING A ONE-YEAR CONTRACT TO THE CALISTOGA TRIBUNE FOR PUBLICATION OF LEGAL ADVERTISEMENTS IN AN AMOUNT NOT TO EXCEED \$15,000 FOR THE PERIOD ENDING JUNE 30, 2019 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT

Authorizing Agreement No. 778

WHEREAS, the City of Calistoga (City) publishes legal notices in a newspaper of general circulation pursuant to California Government Code § 6060 et al; and

WHEREAS, each year, in accordance with Public Contract Code §20169, cities that have more than one newspaper of general circulation must publish a notice inviting bids for the publication of legal notices; and

WHEREAS, the City currently has two adjudicated newspapers within the City: The Weekly Calistogan, published by the Napa Valley Publishing Company, and The Calistoga Tribune; and

WHEREAS, on May 1, 2018, the City filed a Notice Inviting Written Bids for Legal Advertising, said bids to be submitted by Friday, June 8, 2018 at 10:00 A.M.; and

WHEREAS, the City determined that The Calistoga Tribune's proposal is the only proposal received and is complete and responsive; and

WHEREAS, the City Council independently reviewed the staff report and bid proposal at its June 19, 2018, regular meeting; and

WHEREAS, the City desires to enter into an agreement with The Calistoga Tribune for City-wide legal advertising.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Calistoga hereby authorizes the City Manager to execute an agreement substantially in accordance with the attached Professional Services Agreement for publication of legal notices and legal advertisements with The Calistoga Tribune in an amount not to exceed \$15,000, subject to review and approval by the City Attorney.

PASSED, APPROVED, AND ADOPTED by the City Council of the City at a regular meeting held this 19th day of June 2018 by the following vote:

AYES:	Vice Mayor Dunsford, Councilmembers Barnes, Lopez-Ortega and Kraus and Mayor Canning
NOES:	None
ABSTAIN:	None
ABSENT:	None


CHRIS CANNING, Mayor

ATTEST:


KATHY FLAMSON, City Clerk